

SCHEDULE 1

RSC ORDER 15

CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

**Proceedings against estates**

**Rule 6A.**—(1) Where any person against whom a claim would have lain has died but the cause of action survives, the claim may, if no grant of probate or administration has been made, be brought against the estate of the deceased.

(2) Without prejudice to the generality of paragraph (1), a claim brought against “the personal representatives of A.B. deceased” shall be treated, for the purposes of that paragraph, as having been brought against his estate.

(3) A claim purporting to have been commenced against a person shall be treated, if he was dead at its commencement, as having been commenced against his estate in accordance with paragraph (1), whether or not a grant of probate or administration was made before its commencement.

(4) In any such claim as is referred to in paragraph (1) or (3)—

- (a) the claimant shall, during the period of validity for service of the claim form, apply to the court for an order appointing a person to represent the deceased’s estate for the purpose of the proceedings or, if a grant of probate or administration has been made for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate;
- (b) the court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(5A) Where an order is made under paragraph (4) appointing the Official Solicitor to represent the deceased’s estate, the appointment shall be limited to his accepting service of the claim form by which the proceedings were begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the Official Solicitor, directs that the appointment shall extend to taking further steps in the proceedings.

(6) Where an order is made under paragraph (4), rules 7 (4) and 8 (3) and (4) shall apply as if the order had been made under rule 7 on the application of the claimant.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings.

**Change of parties by reason of death, etc.**

**Rule 7.**—(1) Where a party to a claim dies or becomes bankrupt but the cause of action survives, the claim shall not abate by reason of the death or bankruptcy.

### **Failure to proceed after death of party**

**Rule 9.**—(1) If after the death of a claimant or defendant in any claim the cause of action survives, but no order under rule 7 is made substituting as claimant any person in whom the cause of claim vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the claim is proceeded with within such time as may be specified in the order the claim shall be struck out as against the claimant or defendant, as the case may be, who has died; but where it is the claimant who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased claimant and to any other interested persons who, in the opinion of the Court, should be notified.

### **Relator actions**

**Rule 11** Before the name of any person is used in any claim as a relator, that person must give a written authorisation so to use his name to his solicitor and the authorisation must be filed in the Central Office of the Supreme Court or Chancery Chambers, or, if the claim form is to issue out of a district registry, in that registry.

### **Representative proceedings**

**Rule 12.**—(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the claimant, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the claimants sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the permission of the Court.

(4) An application for the grant of permission under paragraph (3) must be made in accordance with CPR Part 23 (general rules about applications for court orders) and the application notice must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of permission under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in claim may be tried and determined.

### **Derivative claims**

**Rule 12A.**—(1) This rule applies to every claim by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf (referred to in this rule as a “derivative claim”).

(2) Where a defendant in a derivative claim has responded to the particulars of claim, the claimant must apply to the Court for permission to continue the claim.

(3) The application must be supported by a witness statement or affidavit verifying the facts on which the claim and the entitlement to sue on behalf of the company are based.

(4) Unless the Court otherwise orders, the application must be issued within 21 days after the relevant date, and must be served, together with the witness statement or affidavit in support and any exhibits to the witness statement or affidavit, not less than 10 clear days before the return day on all defendants who have responded to the particulars of claim; any defendant so served may show cause against the application by witness statement or affidavit or otherwise.

(5) In paragraph (4), “the relevant date” means the later of—

- (a) the date of service of the particulars of claim; or
- (b) the date when the defendant responded to the particulars of claim (provided that, where there is more than one defendant, that date shall be the earliest date when any of them respond).

(6) Nothing in this rule shall prevent the claimant from applying for interim relief pending the determination of an application for permission to continue the claim.

(7) In a derivative claim, CPR rule 15.4 (period for filing a defence) shall not have effect unless the Court grants permission to continue the claim and, in that case, shall have effect as if it required the defendant to serve a defence within 14 days after the order giving permission to continue, or within such other period as the Court may specify.

(8) On the hearing of the application under paragraph (2), the Court may—

- (a) grant permission to continue the claim, for such period and upon such terms as the Court may think fit;
- (b) subject to paragraph (11), dismiss the claim; or
- (c) adjourn the application and give such directions as to joinder of parties, the filing of further evidence, disclosure, cross examination of witnesses and otherwise as it may consider expedient.

(9) If the claimant does not apply for permission to continue the claim as required by paragraph (2) within the time laid down in paragraph (4), any defendant who has responded to the particulars of claim may apply for an order to dismiss the proceedings or any claim made in them by way of derivative claim.

(10) On the hearing of such an application for dismissal, the Court may—

- (a) subject to paragraph (11), dismiss the claim;
- (b) if the claimant so requests, grant the claimant (on such terms as to costs or otherwise as the Court may think fit) an extension of time to apply for permission to continue the claim; or
- (c) make such other order as may in the circumstances be appropriate.

(11) Where only part of the relief claimed is sought on behalf of the company, the Court may dismiss the claim for that part of the relief under paragraphs (8) and (10), without prejudice to the claimant right to continue the claim as to the remainder of the relief and CPR rule 15.4 (period for filing a defence) shall apply as modified by paragraph (7).

(12) If there is a material change in circumstances after the Court has given permission to the claimant to continue the claim in pursuance of an application under paragraph (2), any defendant who has responded to the particulars of claim may make an application supported by witness statement or affidavit requiring the claimant to show cause why the Court should not dismiss the proceedings or any claim made in them by way of derivative claim. On such application the Court shall have the same powers as it would have had upon an application under paragraph (2).

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(13) The claimant may include in an application under paragraph (2) an application for an indemnity out of the assets of the company in respect of costs incurred or to be incurred in the claim and the Court may grant such indemnity upon such terms as may in the circumstances be appropriate.

(14) So far as possible, any application under paragraph (13) and any application by the claimant under CPR Part 24 shall be made so as to be heard at the same time as the application under paragraph (2).

### **Representation of interested persons who cannot be ascertained, etc.**

**Rule 13.**—(1) In any proceedings concerning—

- (a) the estate of a deceased person; or
- (b) property subject to a trust; or
- (c) the construction of a written instrument, including a statute,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

(2) The conditions for the exercise of the power conferred by paragraph (1) are as follows:—

- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
- (b) that the person, class or some member of the class, though ascertained, cannot be found;
- (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purposes of saving expense.

(3) Where, in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not parties to the proceedings (including unborn or unascertained persons) but—

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non—disclosure of material facts.

### **Notice of claim to non—parties**

**Rule 13A.**—(1) At any stage in a claim to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the claim be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made without notice being served on any other party and shall be supported by a witness statement or affidavit stating the grounds of the application.

(3) Every notice of a claim under this rule shall be in Form No. 52 in the relevant Practice Direction and shall be issued out of the appropriate office, and the copy to be served shall be a sealed copy accompanied by a copy of the claim form and of all other statements of case served in the claim and by a form of acknowledgment of service with such modifications as may be appropriate.

(4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the claim form and shall thereupon become a party to the claim, but in default of such acknowledgment and subject to paragraph (5) he shall be bound by any judgment given in the claim as if he was a party thereto.

(5) If at any time after service of such notice on any person the claim form is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended claim form is issued and served upon him under this rule.

(6) This rule applies to any claim relating to—

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

(7) CPR rule 7.2(2) shall apply in relation to a notice of a claim under this rule as if the notice were a claim form and the person by whom the notice is issued were the claimant.

#### **Representation of beneficiaries by trustees, etc.**

**Rule 14.**—(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first—mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

#### **Representation of deceased person interested in proceedings**

**Rule 15.**—(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

#### **Declaratory judgment**

**Rule 16** No claim or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

**Status:** *This is the original version (as it was originally made).*

### **Conduct of proceedings**

**Rule 17** The Court may give the conduct of any claim, inquiry or other proceeding to such person as it thinks fit.