

**Responses to Comments raised by the Bill Committee on
the District Court (Amendment) Bill**

The purpose of this note is to respond to the comments raised by Members of the Bills Committee and those by the Bar Association and the Law Society on the Administration's paper "New Procedural Framework for the District Court".

Need for section 44 and the effect of section 44(3) of the amendment Bill

2. Unlike the Small Claims Tribunal which has exclusive jurisdiction over claims the amount of which is within its jurisdiction, District Court's civil jurisdiction is, at present, non-exclusive and cases within its jurisdiction may be dealt with in the Court of First Instance. The Kempster Working Party recommended that cases within the District Court's jurisdiction should be dealt with in the court to prevent them from unnecessarily encumbering the list of the Court of First Instance. We consider that this should be supported from the perspective of efficient use of court resources.

3. The Working Party recognized that there are cases that may warrant the attention of the judges of the Court of First Instance due to their complexity and importance, in spite of the claim amount. The effect of section 44(3) in clause 22 of the Bill is to provide for the Court of First Instance to make an order under section 44 (ie. to transfer to the District Court all or part of an action or proceeding which appears to the Court of First Instance likely to be within the jurisdiction of the court) while retaining the flexibility for certain cases to remain in the Court of First Instance by reason of importance or complexity.

4. The Court of First Instance will have the power to retain certain cases already filed with the Court of First Instance which fall within the new limits but have already been filed with the Court of First Instance upon the implementation of the new jurisdictional limits. But if the Court of First Instance decides to transfer certain cases to the District Court, the portion of work already conducted in the Court of First Instance in respect of these cases will not be rendered void.

Exclusion of Order 76 relating to Contentious Probate Proceeding from the new rules of the District Court

5. The Probate Registry of the High Court is responsible for processing all applications for grants of representation to the estates of deceased persons and for issuing probate grants. These applications are dealt with by the staff of the Probate Registry in accordance with established procedure under the supervision of the Registrar of the High Court who is designated by the law as the Official Administrator. It would therefore not make any meaningful difference in term of costs to the applicants whether the probate applications are dealt with in the High Court or in the District Court.

6. Order 76 of the Rules of the High Court deals with litigation arising out of applications for grant of probate (ie. probate action). Generally speaking, probate actions are preceded by applications made to the Probate Registry. If there is a dispute over the grant of probate, the Probate Master will conduct a chamber hearing. If the dispute cannot be resolved at the hearing, the matter will be determined by way of a probate action before a judge of the Court of First Instance. From the court experience, the number of probate actions is few (about 10 actions a year) but they are usually complex by nature and therefore warrant the attention of a judge of the Court of First Instance with expertise in probate matters. In addition, it is not uncommon for probate actions to involve inspection of or reference to original wills and probate documents already filed with the Probate Registry for probate applications. It is therefore desirable from both the perspectives of the efficient utilization of resources and convenience to litigants that probate actions be dealt with in the Court of First Instance.

Standard discovery of documents

7. Under the new District Court Rules, the court may order a party to serve a list of documents within its possession, custody and power relating to any matter in question in the action and to make and file an affidavit verifying such a list. This provision is the same as Order 24, Rule 3(1) of the Rules of the High Court.

8. The new proposal is that, save on good cause shown by the party applying for directions, discovery shall be limited to –

- (a) the documents on which a party relies; and

- (b) the documents which –
 - (i) adversely affect his own case;
 - (ii) adversely affect another party's case; or
 - (iii) support another party's case.

However, it should be noted that, if a good cause is shown, discovery can always be extended to other documents by virtue of the provision set out in paragraph 7 above.

9. We consider that the proposal is a good reform. On the one hand, it prescribes simpler and stricter procedures on discovery which will lead to reduction in litigation costs. On the other hand, it does not prevent discovery from being extended to other documents if good justifications are shown. As far as the parties to the litigation are concerned, it makes sense that legal costs should be proportionate to the amount at stake. Having regard to its revised jurisdictional limits, we consider it appropriate to introduce this procedure in the District Court.

Interim payment of costs forthwith without taxation

10. Under Order 62, r.4(1) of the Rules of the High Court, the court is vested with the power to order the payment of costs forthwith. This power will not normally be invoked except to discourage frivolous interlocutory applications.

11. At present, Order 62 rule 9(4)(b) of the Rules of the High Court provides that “the Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled – (b) to a gross sum so specified in lieu of taxed costs”. The advantages of this provision are that it would have the effect of discouraging frivolous interlocutory applications, avoid the need for a separate taxation of a “costs to be taxed and paid forthwith” order, redress the balance between the parties where one party might be disadvantaged by having to pay their own solicitor heavy fees caused by unnecessary interlocutory applications brought by the other, and bring home to the parties the reality of the level of costs incurred to-date.

12. The power to order the payment of a gross sum in lieu of taxed costs is however not often used because a judge or master seeking to make such an order is in the position of having to carry out a mini-taxation at the time. A party intending to apply for an order would have to be prepared with a draft bill which would have to be served on the

paying party so that they are in a position to challenge it. The procedure therefore becomes cumbersome and potentially could incur greatly increased costs.

13. In early 1999, the High Court Rules Committee, having consulted the Civil Court Users Committee (on which both the Bar Association and the Law Society are represented), has come to the view that similar advantages as set out in paragraph 11 above can be achieved by amending the existing rule to enable the High Court to make an interim order for costs payable forthwith, to be taken into account, and credit given for it, upon final taxation at the conclusion of the proceedings. The Rules of the High Court are being amended to this effect.

14. In anticipation of this amendment to the Rules of the High Court, we propose that similar provision be included in the new District Court Rules. This power will only be used in cases that warrant it. The court will no doubt take into account the likely hardship to the party in deciding whether to make the costs payable immediately.

Return date for personal injuries cases

15. The Law Society proposes that once a writ has been issued in the District Court, procedures should be in place to provide a return date from the date of the issue of the writ with automatic directions for discovery. This is similar to the practice now adopted for personal injuries cases in the High Court. We intend to adopt similar practice in the District Court to deal with personal injuries cases through the issue of Practice Directions.

Automatic directions for discovery

16. Under the new District Court Rules, automatic standard directions in default of agreed directions where parties are represented will apply to all cases. The Law Society proposes that automatic directions for discovery could be included in the note that is sent out with the writ. We are now reviewing all the forms used in the District Court and will consider the Society's suggestion in this context.

Provisional taxation by Chief Judicial Clerk

17. The practice for Chief Judicial Clerk (CJC) in the High Court to deal with bills not exceeding \$100,000 under the provisional taxation

arrangement is provided by Order 62 of the Rules of the High Court. CJs are experienced judicial clerks and, in performing the task, they are guided by the relevant court rules and are under the supervision of the Registrar of the High Court. It should be noted that when the bill is submitted for provisional taxation, the parties can either agree or object to the decision of the CJ. If any party objects, an appointment will be given for formal taxation of the bill before a master.

18. At present, bills of the District Court cases exceeding \$50,000 are transferred to the High Court for taxation. In future, Masters of the District Court will deal with taxation of the bills of the District Court cases and may conduct taxation hearings if required. The proposal to enable the CJs in the District Court to deal with bills not exceeding \$100,000 under the provisional taxation arrangement is in line with the current practice of the High Court. In performing the task, they will be supervised by the Registrar of the District Court who will be legally qualified.