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PART 39 – MISCELLANEOUS PROVISIONS RELATING TO HEARINGS


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Interpretation

39.1

(1) In this Part—

(a) "hearing" means the occasion on which any interim or final decision is or may be made by a judge, at which a person is, or has the right to be, heard in person, by telephone, by video or by any other means which permits simultaneous communication; and

(b) "judge" has the same meaning as in rule 2.3(1).

(2) This Part is subject to rule 62.10 (hearings in arbitration claims).

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General rule – hearing to be in public

39.2

(1) The general rule is that a hearing is to be in public. A hearing may not be held in private, irrespective of the parties' consent, unless and to the extent that the court decides that it must be held in private, applying the provisions of paragraph (3).

(2) In deciding whether to hold a hearing in private, the court must consider any duty to protect or have regard to a right to freedom of expression which may be affected.

(2A) The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private.

(3) A hearing, or any part of it, must be held in private if, and only to the extent that, the court is satisfied of one or more of the matters set out in sub-paragraphs (a) to (g) and that it is necessary to sit in private to secure the proper administration of justice –

(a) publicity would defeat the object of the hearing;

- (b) it involves matters relating to national security;
- (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
- (d) a private hearing is necessary to protect the interests of any child or protected party;
- (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
- (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
- (g) the court for any other reason considers this to be necessary to secure the proper administration of justice.

4) The court must order that the identity of any person shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that person.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court's order shall be published on the website of the Judiciary of England and Wales (which may be found at www.judiciary.uk). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.

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Failure to attend the trial

39.3

(1) The court may proceed with a trial in the absence of a party but –

- (a) if no party attends the trial, it may strike out^(GL) the whole of the proceedings;
- (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim; and
- (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).

(2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside^(GL).

(4) An application under paragraph (2) or paragraph (3) must be supported by evidence.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –

- (a) acted promptly when he found out that the court had exercised its power to strike out^(GL) or to enter judgment or make an order against him;
- (b) had a good reason for not attending the trial; and
- (c) has a reasonable prospect of success at the trial.

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Timetable for trial

39.4 When the court sets a timetable for a trial in accordance with rule 28.5 (confirming the trial date and giving directions) or rule 29.8 (setting a trial timetable and fixing or confirming the trial date or week – multi-track) it will do so in consultation with the parties.

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Trial bundles

39.5

(1) Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by –

- (a) a relevant practice direction; and

(b) any court order.

(2) The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.

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Representation at trial of companies or other corporations

39.6 A company or other corporation may be represented at trial by an employee if –

(a) the employee has been authorised by the company or corporation to appear at trial on its behalf; and

(b) the court gives permission.

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Impounded documents

39.7

(1) Documents impounded by order of the court must not be released from the custody of the court except in compliance –

(a) with a court order; or

(b) with a written request made by a Law Officer or the Director of Public Prosecutions.

(2) A document released from the custody of the court under paragraph(1)(b) must be released into the custody of the person who requested it.

(3) Documents impounded by order of the court, while in the custody of the court, may not be inspected except by a person authorised to do so by a court order.

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Communications with the court

39.8.

(1) Any communication between a party to proceedings and the court must be disclosed to, and if in writing (whether in paper or electronic format), copied to, the other party or parties or their representatives.

(2) Paragraph (1) applies to any communication in which any representation is made to the court on a matter of substance or procedure but does not apply to communications that are purely routine, uncontentious and administrative.

(3) A party is not required under paragraph (1) to disclose or copy a communication if there is a compelling reason for not doing so, and provided that any reason is clearly stated in the communication.

(4) A written communication required under paragraph (1) to be copied to the other party or parties or their representatives, must state on its face that it is being copied to that person or those persons, stating their identity and capacity.

(5) Unless the court directs otherwise, a written communication which does not comply with paragraph (4) will be returned to the sender without being considered by the court, with a brief explanation of why it is being returned.

(6) In addition to returning a communication under paragraph (5), where a party fails to comply with paragraph (1) the court may, subject to hearing the parties, impose sanctions or exercise its other case management powers under Part 3.

(7) Paragraph (1) does not apply to communications authorised by a rule or practice direction to be sent to the court without at the same time being provided to the other party or parties or their representatives.

Recording and transcription of proceedings

39.9

(1) At any hearing, whether in the High Court or the County Court, the proceedings will be tape recorded or digitally recorded unless the judge directs otherwise.

(2) No party or member of the public may use unofficial recording equipment in any court or judge's room without the permission of the court. (To do so without permission constitutes a

(3) Any party or person may require a transcript or transcripts of the recording of any hearing to be supplied to them, upon payment of the charges authorised by any scheme in force for the making of the recording or the transcript.

(Paragraph 6(2) of Practice Direction 52C (Appeals to the Court of Appeal) deals with the provision of transcripts for use in the Court of Appeal at public expense.)

(4) Where the person requiring the transcript or transcripts is not a party to the proceedings and the hearing or any part of it was held in private under rule 39(2), paragraph (3) of this rule does not apply unless the court so orders.

(5) At any hearing, whether in public or in private, the judge may give appropriate directions to assist a party, in particular one who is or has been or may become unrepresented, for the compilation and sharing of any note or other informal record of the proceedings made by another party or by the court.

Discontinuance and settlement

39.10

(1) Where a claim is discontinued or settled after a date for the trial or trial window (the period during which it is expected that the trial will take place) has been fixed, the parties must ensure that the listing officer for the trial court is notified immediately.

(2) If an order is drawn up giving effect to the discontinuance or settlement, a copy of the order should be filed with the listing officer.”.

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