Welcome to this short presentation to assist in consolidating your learning in relation to interim applications.

Interim applications are applications for orders or directions made to the court, usually in the ‘interim’ period between the commencement of proceedings and trial. Some interim remedies can be applied for before the commencement of proceedings.

Examples of interim applications are varied, but include extending the time period for taking a particular step in the proceedings, applying to amend a statement of case, requiring the other party to provide further information, requesting specific disclosure of a document and seeking permission to rely on expert evidence.

Notwithstanding that interim applications can be made at any stage in the proceedings, the overriding objective will normally require an interim application to be made as early as possible.

**With notice procedure**

Let's look first at the normal procedure for making an interim application. Imagine I am the defendant and I want an extension of time for filing and serving my defence which the other side cannot or won't grant me. Firstly I issue an application notice at court, and also file evidence in support of that application. So that might be a witness statement explaining why I need more time to file my defence, together with any supporting documents. I attach a draft order, so the order that I want the court to make ie an order granting an extension of time for the filing and serving of my defence, and possibly also an order that the claimant should pay my costs of the application. When I issue that application at court, the court will give me a hearing date at which the court will decide that application. Then I serve those documents on the other party, the claimant. I must do that at least three clear days before the date which the court has set for the hearing. The claimant may well want to oppose my application, and to file evidence opposing the application. It must do so as soon as possible, filing and serving that evidence. If I wish to rely on evidence in reply, I must then file and serve that as soon as possible. At the hearing the court may want to determine that one party should pay the other party's costs in relation to the application, in which case it will need to know what those costs are , so the parties file and serve statements of costs 24 hours before the hearing as well. Then there is a hearing at which the court decides whether or not to grant the extension of time for filing and serving the defence, and whether one party should pay the other party's costs in relation to the application.

**Without notice procedure**

It is possible to make an application without notice, meaning without telling the other party. In this case, the application is prepared and issued at court, but it is not served and the respondent has no opportunity to respond to it or to appear at the hearing. At the hearing, the court hears only from the applicant. Obviously, this is not generally how justice is done , and this procedure can only be used when justified.

Examples of when this procedure might be appropriate are if the application is extremely urgent , or if the object of the application would be defeated by giving notice . For example, an application for a search order will virtually always be made without notice because the purpose of obtaining a search order is that it allows a search of the respondent's premises to look for evidence before the respondent has chance to destroy that evidence. The whole point of the application would be defeated if the respondent knew in advance that the search party might be coming.

To mitigate the potential unfairness of this procedure, in the respondent's absence the applicant must give full and frank disclosure of matters relevant to the hearing even if adverse to the applicant's position. The application and evidence will be served on the respondent after the hearing. In relation to some kinds of application, if the court grants an order at a without notice hearing, it will also arrange a second hearing to decide whether the order should continue, and the respondent will be able to attend and make representations at that hearing.

So having considered the procedure in broad terms, let us look at some particular types of interim application .

**Summary judgment**

Summary judgment enables the court to dispose of weak cases or issues without the need for a full trial. It brings the claim to an early end. The claimant can apply for summary judgment ie for the court to determine that the claim has succeeded. The defendant can also apply for summary judgment ie for the dismissal of the claim. And summary judgment can be sought in relation to the whole claim or in relation to specific issues . Clearly if the court is going to bring the claim to an early end at the hearing of an interim application, rather than at a trial, there needs to be a good reason for this .

**Grounds for summary judgment**

The party applying for summary judgment needs to show that the other party has no real prospect of success on the claim or issue to which the application relates. In addition, the party applying for summary judgment needs to show that there is no other compelling reason why the case or issue should be disposed of at trial, for example that the respondent needs further time to investigate the matter, or there are difficult questions of fact or law, or the claim is highly complex.

**With notice procedure – summary judgment**

In terms of procedure, an application for summary judgment follows broadly the same procedure as any other application, but note these specific timings shown on this diagram which provide for more time than the default rules for applications. So the application notice and supporting documents must be served on the respondent at least 14 days before the hearing, if the respondent wishes to file on evidence in reply this must be filed and served seven days before the hearing, and if the applicant wishes to file and serve further evidence in reply this must be filed and served at least three days before the hearing.

If an application for summary judgment relates to the entire claim and is successful, the claim is at an end. If an application for summary judgment relates to the entire claim and it is unsuccessful, the claim continues as it originally would. If the application for summary judgment relates to particular issues only, then whatever the outcome in relation to those issues, the claim will need to proceed towards trial in relation to the remaining issues at least.

Let's have a look at another type of application – an application for security for costs.

**Security for costs**

An application for security for costs is an application made by a person in the position of the defendant who is concerned that the claimant will not be willing / able to pay the defendant’s costs should the claim be successfully defended. If the application is successful, the claimant who is the respondent will be ordered to give security, which commonly means to pay a sum of money into court or to the defendant's solicitors so that that sum of money can be used to meet any costs order which is eventually made in the defendant's favour.

The defendant must satisfy two matters before an order for security for costs can be made. It must be just having regard to all the circumstances of the case . And one or more of the conditions set out in CPR 25.13(2) must be satisfied.

A relatively common condition is that the claimant is a company and there is reason to believe it will be unable to pay the defendants costs if ordered to do so - generally because the claimant is in a poor financial position. An alternative condition is that the claimant has taken steps in relation to its assets that would make it difficult to enforce an order for costs against it – for example, intentionally moving them into jurisdictions overseas in which it is particularly hard to enforce a judgment of the English and Welsh courts .

Let's look at another type of application – an application for an interim payment.

**Interim payment**

An interim payment is a payment on account of damages debt or other sum (except costs) which a defendant may be held liable to pay to a claimant. Note the contrast with security for costs. A security for costs application is made by the defendant against the claimant, and it relates to costs. An interim payment application is made by a claimant against a defendant, and relates to the substance of the claim, not costs.

Fairly obviously, to order a defendant to pay a substantial sum of money to a claimant before they have even reached the trial could be seen as rather unfair if it were not for the fact that the court can only make an order for interim payment in specific limited circumstances. The most common are that the defendant has admitted liability to pay damages or some other sum of money to the claimant, or the claimant has obtained judgment against the defendant for damages to be assessed, or the court is satisfied that if the claim went to trial the claimant would obtain judgment for a substantial sum of money against the defendant.

**With notice procedure – interim payments**

Just like summary judgment, this type of application has special timings, and they are in fact the same timings as in an application for summary judgment. So the application notice and supporting documents must be served on the respondent at least 14 days before the hearing, if the respondent wishes to file any evidence in reply this must be filed and served seven days before the hearing, and if the applicant wishes to file and serve further evidence in reply this must be filed and served at least three days before the hearing.

**Interim injunction**

Some students will have been asked to study an element relating to interim injunctions. An interim injunction is an order of the court requiring a party to do or to refrain from doing a given act. It is usually made in circumstances of urgency and lasts until trial or further order.

An injunction is only awarded when just, and it is an equitable and discretionary remedy. By way of guidelines to the exercise of that discretion, an injunction will only be considered if there is a serious question to be tried – a genuine underlying claim. If damages at trial would be an adequate remedy for the applicant, an interim injunction is unlikely to be awarded. If damages would not be adequate for the applicant, but the respondent could be adequately compensated with damages if it transpires that an injunction is wrongly granted, then this points in favour of granting an injunction. If damages would be adequate for neither party, the court will consider the balance of convenience, balancing the potential injustice to each in party in refusing or granting an injunction to make a decision.

**Interim injunctions - procedure**

Interim injunctions are a powerful and disruptive remedy, with particular procedural safeguards. A court will often decide to grant an interim injunction only if the applicant offers an cross-undertaking to pay damages to the respondent for any loss sustained by reason of the injunction if it is subsequently held that the applicant ought not to have been granted an interim injunction - for example, if proceedings are discontinued, or the injunction is discharged before trial, or if it is decided at trial that the applicant had not been entitled to restrain the respondent from doing what it was threatening to do. The application for an interim injunction, like any interim application, can be made without notice if this is justified but the court will fix a second hearing in order to hear from the respondent, and to decide whether to keep the injunction in place. An application can be made before a claim is issued if this in the interest of justice, but the applicant will be required to undertake to issue a claim form immediately.

**Summary**

So in summary

• Interim applications are applications made before the dispute reaches trial.

• An application is made by filing an application notice, evidence and usually a draft order at court, and then serving this on a respondent, who may file evidence in reply. The application is then determined, usually at a hearing. In limited circumstances, an application can be made without notice – without giving the other side a chance to respond.

• An application for summary judgment is an application to bring a weak claim or issue to an end without it going to trial.

• An application for security for costs is made by a defendant, and aims to make the claimant put aside a sum of money which will be available to satisfy any future costs order that might later be made in the defendant's favour.

• An application for an interim payment is made by a claimant, and seeks a payment of a sum of money in relation to the claim in advance of trial.

• An application for an interim injunction seeks an order for the respondent to do or not do something pending trial.