Practice Note — Chancery Division — guidance on Civil Procedure Rules

May 4, 1999

Chancery Division

Practice Note (Chancery Division: Civil Procedure Rules)

Chancery practitioners in the interim applications court and the companies court were given guidance on the new Civil Procedure Rules (SI 1998 No 3132) by Mr Justice Neuberger in the Chancery Division on April 26.

HIS LORDSHIP said that he was authorised by the Vice-Chancellor to make the following statement:

All counsel and solicitors should be aware of the new procedure. The procedure on interim applications was laid down in Part 23 of the Civil Procedure Rules and the accompanying practice directions.

It was also dealt with in the new *Chancery Guide* (April 1999) at chapter 7 of section A, pp 15 to 17.

They should also be aware that the procedure of the companies court was governed by Part 49 of the Civil Procedure Rules and the accompanying practice direction. In the *Chancery Guide* it was dealt with in chapter 20 of section B, pages 54 to 55.

As far as the interim applications court was concerned, all applications and cases would be dealt with under the new Civil Procedure Rules and not the old Rules of the Supreme Court unless good reason was shown.

His Lordship said that he should also draw attention to the court's case management powers in Part 3 of the Civil Procedure Rules. Rule 3.3 conferred on the court wide powers to make orders on its own initiative.

Those new powers were a central feature of the new system. In the interim applications court the judge would, time and other applications permitting, consider giving directions in appropriate cases of his/her own motion.

If counsel believed that directions should be considered or made in a particular case, he or she should bear in mind the new rules and indeed the new culture and bring the question of appropriate directions to his or her opponent or the court.

Practice — Civil Procedure Rules — right to solicitor or advocate of own choice survives

May 4, 1999

Chancery Division

Maltez v Lewis

Before Mr Justice Neuberger

[Judgment April 27]

The right of a litigant to be represented by solicitors or an advocate of his or her own choice was fundamental and well established. The Civil Procedure Rules (SI 1998 No 3132) should not be interpreted in such a way as to reduce or remove that right notwithstanding "the level playing field" envisaged by rule 1.1(2)(a).

Mr Justice Neuberger so held in the Chancery Division when dismissing an application by Dulce Maltez, the claimant, that the defendant, Damien Lewis, be debarred from instructing leading or senior counsel.

Mr Peter Sheridan, QC, for Mr Lewis; Mr Ralph Wehrle for Ms Maltez.

MR JUSTICE NEUBERGER said that the claimant made the instant application because at trial she would be represented by junior counsel of seven years call, whereas the defendants would be represented by leading counsel of considerably greater years and experience. The claimant contended that it was inappropriate that the defendant should have leading counsel in light of "the level playing field" envisaged by rule 1.1(2)(a) and the desirability of proportionality in rule 1.1(2)(c).

The claimant contended that the court had jurisdiction to make the order she sought under rule 1.1(2) of the Civil Procedure Rules.

His Lordship said the new rules represented a radical change, particularly in terms of the court's powers to manage cases. The extent of the court's case management powers had been substantially extended and the circumstances in which the court would exercise those powers were far wider.

However, it was a fundamental right of every citizen to choose his or her own counsel. That right was not absolute: a chosen lawyer might be ill or engaged elsewhere, a legally aided litigant might find that the Legal Aid Board was not prepared to fund his choice of representative.

However, subject to that type of consideration, the right to choose an advocate or solicitor was well established and an important ingredient of any free society.

Although the new rules conferred wide new powers on the court, those should not be interpreted so as to cut down or remove that right.

The court could ensure compliance with the objective set out in rule 1.1 where the representatives could be said to be unequal. The new powers could be applied so that a party was not unfairly visited by excessive costs because the other party had instructed unreasonably expensive advisers.

Furthermore, if one party could afford experienced, large and expensive solicitors, whereas the other could only afford small and relatively inexperienced advisers, the court could make orders to ensure that the level playing field envisaged by rule 1.1(2)(a) could be achieved.

Such measures could include allowing the smaller firm more time, or requiring the larger firm to prepare court bundles.

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