

**Costs Management in the Chancery Division and the Specialist Lists in the Queen's
Bench Division: Amendment to CPR rule 3.12(1)**

This document has been issued by the President of the Queen's Bench Division and the Chancellor of the High Court to give notice of an important amendment which will be made to CPR 3.12(1) to change the rule currently in the Statutory Instrument.

Costs Management is being introduced as an important part of the reforms arising from Lord Justice Jackson's Review of Civil Litigation Costs. He identified a general view that costs management would not be appropriate for the high value cases which generally pass through the Commercial Court. He therefore considered that whether costs management should be adopted in Commercial Court litigation should be left to the discretion of judges in individual cases but said he encouraged judges actively to adopt costs management in any lower value cases which are brought in the Commercial Court. This led to the Admiralty and Commercial Courts being excepted from the costs management rules by the version of rule 3.12(1) which was included in The Civil Procedure (Amendment) Rules 2013 to come into effect in April 2013.

On further reflection, it has been recognised that it is undesirable for an exception from automatic costs management to apply only to the Admiralty and Commercial Courts, when in many commercial cases there is an element of concurrent jurisdiction between that court, the Chancery Division, the Technology and Construction Court and the London Mercantile Court, all of which function in the Rolls Building. Equally, outside London, the Chancery Division, Technology and Construction Court and Mercantile Courts have a similar concurrent jurisdiction.

Given these concurrent jurisdictions, the Civil Procedure Rule Committee at its meeting on 8 February 2013 approved the following amended rule 3.12(1) to allow for a similar exemption from automatic costs management in all of those jurisdictions;

- (1) This Section and Practice Direction 3E apply to all multi-track cases commenced on or after 1st April 2013, except -*
- (a) cases in the Admiralty and Commercial Courts;*
 - (b) such cases in the Chancery Division as the Chancellor of the High Court may direct; and*
 - (c) such cases in the Technology and Construction Court and the Mercantile Courts as the President of the Queen's Bench Division may direct,*
- unless the proceedings are the subject of fixed costs or scale costs or the court otherwise orders. This Section and the Practice Direction 3E will apply to any other proceedings (including applications) where the court so orders.*

This rule will be included in a further Statutory Instrument which it is intended will be made so as to come into force on 1 April 2013.

At the same time a direction will be made under the amended CPR 3.12(1) in these terms:

Pursuant to CPR rule 3.12(1)(b) and (c), the Chancellor of the High Court directs that in the Chancery Division and the President of the Queen's Bench Division directs that in the Technology and Construction Court and Mercantile Courts, Section II of CPR 3 and Practice Direction 3E shall not apply to cases where at the date of the

first case management conference the sums in dispute in the proceedings exceed £2,000,000, excluding interest and costs, except where the court so orders.

The Master of the Rolls has been consulted on and agrees with this direction. Parity of approach in relation to Costs Management between these Courts is considered to be important to avoid any inappropriate forum shopping as parties get used to the new rules. The revised rule is an interim measure, as it is thought that the case for any exception should be re-visited, given that under the rules there is a discretion which might be exercised in particular cases not to make a costs management order, which could deal with any remaining concerns as to the appropriateness of costs management in high value cases. Also, after that review of the position, it will be desirable for the principle finally decided on to be incorporated in rule 3.12(1) itself rather than in a direction.

Subject to the limited exceptions which will be dealt with in the direction, it is envisaged that costs management orders would be made in all cases except where there is good reason not to do so. Even when the exceptions in the rule and the direction apply, the use of costs management should always be considered

Dated 18 February 2013

Sir John Thomas, President of the Queen's Bench Division
Sir Terence Etherton, Chancellor of the High Court