



PRACTICE STATEMENT DIGEST

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PRACTICE STATEMENT

COMPANIES: SCHEMES OF ARRANGEMENT UNDER PART 26 AND PART 26A OF THE COMPANIES ACT 2006

KEY TAKEAWAYS:

1. The new Practice Statement in relation to schemes of arrangement and restructuring plans operates to facilitate the early identification and active case management of contested issues, with a view to such issues being resolved in an efficient and orderly manner.
2. By aspiring to ensure a proportionate allocation of the Court's time and resources to such proceedings, the new Practice Statement seeks to ease pressure placed on the Court by Part 26A of the Companies Act 2006.

BACKGROUND

The new Practice Statement replaces the previous one, dated 26 June 2020, and is directed to the practice to be followed in proceedings pursuant to **Part 26 or Part 26A of the Companies Act 2006** seeking the **sanction of the Court** to a **scheme of arrangement or restructuring plan between a company and its creditors or members**.

OBJECTIVES

1. To **ENABLE ISSUES** concerning the jurisdiction of the Court to sanction the scheme or plan, the composition of classes of creditors and/or members, and the convening of meetings to be **IDENTIFIED and, if appropriate, RESOLVED EARLY in the proceedings**; and
2. To **FACILITATE THE EARLY IDENTIFICATION and ACTIVE CASE MANAGEMENT** of contested issues, with a view to such issues being **RESOLVED IN AN EFFICIENT AND ORDERLY MANNER** which involves a **PROPORTIONATE ALLOCATION** of the Court's time and resources.

WHAT ARE PRACTICE STATEMENTS?

"Practice Statements are **issued by the Executive** to provide **informal guidance** to companies involved in takeovers and practitioners as to **how the Executive normally interprets and applies relevant provisions of the Code** in certain circumstances.

Practice Statements do not form part of the Code, are **not binding** and are **not a substitute for consulting the Executive** to establish how the Code applied in a particular case.

They are to be found toward the back of the Code, after the Appendices, and on the panel's website."

LexisNexis Definition

COMMENCEMENT

The New Practice Statement will apply in all cases where an application for a meetings order is to be dealt with at a convening hearing listed on any date on or after 1 January 2026.

ISSUE OF PROCEEDINGS

Claim Form

A claim form seeking orders under Part 26 or Part 26A must now be issued in the name of the scheme or plan company before the date for any Court hearings is arranged with the Court.

The Listing Note

When issuing the claim form, the applicant should also file a "listing note" in order to assist the Court in managing its resources and listing cases efficiently.

The listing note should briefly set out time estimates for hearings; a timetable for the proceedings overall; a description of any relevant matters likely to have an impact on the proposed timetable; and any factors giving rise to urgency and when they first came to light.

In the event of any material change in the matters covered by the listing note, the Court should be notified as soon as practicable.

Practice Statement Letter

Where a practice statement letter is required, a copy should be filed with the claim form if then available.

If not available, a copy should be filed with the Court as soon as practicable thereafter.

RESPONSIBILITIES OF THE APPLICANT IN RELATION TO THE CONVENING HEARING

It is the responsibility of all parties to facilitate the achievement of the objectives of the Practice Statement at the convening hearing so far as they can reasonably do so.

Applicant's Evidence

The applicant's evidence should be filed and made available to creditors and/or members as soon as practicable, normally at least 14 days before the date of the convening hearing (contrary to CPR 8.5(1) requirement).

Where relevant the applicant should identify in its evidence the following:

- the steps taken to give notice of the convening hearing and any response received;
- any issues identified and such matters which may be relevant to the proper determination of those issues; and
- whether any update is required to the matters covered in the listing note, in particular as regards timing.

Cross-Class Cram Down (Part 26A)

If it is envisaged that the Court may be asked at the sanction stage to exercise its power to sanction a plan where one or more classes of creditors or members has not voted in favour of the plan, the applicant's evidence should explain in particular:

- whether there has been any engagement, and if so to what extent, with the plan company's creditors and members;
- whether any objections to the proposed restructuring have been made by any of the company's creditors or members; and
- the information, and level of information, that has been provided to creditors or members.

The applicant's evidence for the convening hearing should include a copy of the final form of the proposed explanatory statement.

RESPONSIBILITIES OF THE OTHER PARTIES IN RELATION TO THE CONVENING HEARING

Any party objecting to the scheme or plan whose objection is likely to have an impact on matters to be considered at the convening hearing should if practicable identify the nature of their objection(s) at least 7 days prior to the convening hearing.

They should seek to do so with as much precision as possible and, if relevant, should propose directions as they consider desirable.

Where any issue has been drawn to the Court's attention which is not suitable for determination at the convening hearing, the Court will consider what further directions may be necessary to resolve that issue in a timely and proportionate manner, whether at the sanction hearing or otherwise.

Where an issue has been dealt with at a convening hearing before a High Court Judge, members and/or creditors will still be able to appear and raise objections based on the same issue(s) at the sanction hearing, but the Court will expect them to show good reason why they did not raise the issue(s) at the convening hearing.

MATTERS FOR CONSIDERATION AT CONVENING HEARING

The objectives of the Court at the convening hearing are twofold:

1. to dispose of such matters as can fairly and properly be dealt with at that hearing;

and

2. where relevant, give directions for the case management of such other issues (and in particular contested issues) as cannot be dealt with at that hearing.

The Court will consider the explanatory statement and may refuse to make a meetings order if it considers that the explanatory statement is not in an appropriate form or is otherwise manifestly deficient.

The Court will NOT approve the substance of the explanatory statement at the convening hearing, and it will remain open to any person affected by the scheme or plan to raise issues as to its adequacy at the sanction hearing.

LISTING OF APPLICATIONS

Applications for a Part 26 meetings order in respect of a members' scheme may be listed before either an Insolvency and Companies Court Judge or a High Court Judge, although most will have to be heard by High Court Judges.

Where a High Court Judge hears an application for a meetings order at a convening hearing, the Judge should indicate whether it is desirable for them also to hear the application to sanction the scheme or plan and/or to deal with any other hearings prior to the sanction hearing.

The Practice Statement objectives operate to encourage the same High Court Judge to see the case through to sanction.

ALEXANDER'S PRACTICE ENCOMPASSES
INSOLVENCY, ARBITRATION AND
COMMERCIAL CHANCERY. THIS
INCLUDES CONSIDERABLE CROSS-
BORDER AND OFFSHORE EXPERIENCE.

IF WE CAN ASSIST FURTHER, PLEASE
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