“Dear Colleagues:

**LCCC Draft Orders**

I hope you are each enjoying a well deserved summer break albeit in difficult circumstances.

I am writing concerning  two  increasingly prevalent habits concerning orders filed with paper applications requiring judicial approval. I would be very grateful; if you could circulate this email to those you represent on the Users Committee and/or arrange for it to be posted on the relevant professional association websites.

In an increasingly large number of cases draft orders are incorrectly entitled. The correct title of the Court is:

"In the High Court of Justice

Business and Property Courts of England and Wales

London Circuit Commercial Court (QBD)"

The failure to entitle orders correctly means that either a judge or official has to correct them. This takes up time that is simply not available. There is no justification for these failures or for the use of court resources in correcting them.

With effect from 7 September 2020, any draft order that is not correctly entitled is likely to be rejected with a request for it to be re lodged in correct form.

The other problem arises in relation to orders the court is asked to make on paper, that are **not** consent orders.

The provisions of CPR r. 3.3(4)-(6) are or should be well known to all practitioners. These rules require that where a court makes an order (otherwise than by consent of all parties) without a hearing, any party affected may apply to vary or set aside the order - see CPR r.3.3(4) and (5)(a). An order (other than a consent order) made without a hearing must contain  a statement to that effect - see CPR r.3.3(5)(b).

A very large number of **non consent** draft orders submitted with paper applications do not contain such provisions, which means that either a judge or official has to insert the relevant provision. There can be no justification for these omissions. Correcting the omissions wastes a significant amount of time.

With effect from 7 September 2020, any non consent order lodged with a paper application (other than one where it has been agreed between the parties that it can be determined on paper)  not including a paragraph to the following effect is likely to be to be rejected with a request for it to be re lodged with the correct paragraph inserted.

The paragraph should be in the following form:

"This Order having been made without hearing the parties or giving them an opportunity to make representations, any party affected may apply to vary or set aside this order providing any such application is issued by no later than 4pm 7 days after service of this order on the party making the application."

**Applications dealt with on paper by consent** do not require such a paragraph to be inserted - see CPR r. 23.8

Kind regards,

**Mark Pelling”**