

PRACTICE DIRECTION - MERCANTILE COURTS AND BUSINESS LISTS

THIS PRACTICE DIRECTION SUPPLEMENTS PART 49 OF THE CPR AND REPLACES, WITH MODIFICATIONS, ORDER 48C OF THE COUNTY COURT RULES 1981 AND THE PRACTICE DIRECTIONS ESTABLISHING MERCANTILE COURTS IN MANCHESTER, LIVERPOOL, BIRMINGHAM, BRISTOL, LEEDS AND NEWCASTLE-UPON-TYNE. THE LORD CHANCELLOR HAS GIVEN HIS APPROVAL TO A MERCANTILE COURT FOR WALES AND CHESTER. THIS PRACTICE DIRECTION COMPLEMENTS THE COMMERCIAL COURT PRACTICE DIRECTION, ALSO SUPPLEMENTAL TO PART 49.

GENERAL

1.1 In this practice direction:-

(1) “mercantile claim” means a claim relating to a commercial or business transaction and includes (but is not limited to) any claim relating to -

- (i) a business document or contract;
- (ii) the export or import of goods or the sale of goods;
- (iii) the carriage of goods by land, sea, air or pipeline;
- (iv) the exploitation of oil and gas reserves;
- (v) insurance and re-insurance;
- (vi) banking and financial services;
- (vii) the operation of markets and exchanges;
- (viii) business agency;
- (ix) the customs and practices of particular trades, businesses or commercial organisations;
- (x) commercial fraud;
- (xi) professional negligence in a commercial context;
- (xii) arbitration applications (paragraph 6 below)

but does not include -

- (i) any claim concerning the sale of goods by or against an individual consumer; or
- (ii) any claim to which CPR Part 49 (other than rule 49(2)(c)) applies.

and “mercantile proceedings” has a corresponding meaning.

- (2) “Mercantile Court” means one of the Mercantile Courts established to deal with mercantile claims in the High Court but does not include the Commercial Court of the Queen’s Bench Division.
- (3) “Authorised county court” means the Central London County Court and any other county court authorised by the Lord Chancellor to operate a Business list for the purposes of dealing with mercantile proceedings.
- (4) “Mercantile judge” means, in relation to proceedings in the High Court, a judge, or a person authorised to sit as a judge, of a Mercantile Court and, in relation to proceedings in a county court, the judge or judges authorised to deal with cases in the Business list of an authorised county court.

- 1.2 Mercantile proceedings may be dealt with in the High Court subject to the restrictions on claims that can be commenced in the High Court (see CPR rule 16.3(5) and paragraph 2.1 to 2.4 of the Practice Direction that supplements CPR Part 7), or may be dealt with in an authorised county court.
- 1.3 The Civil Procedure Rules (the CPR) and the practice directions supplementing them apply to mercantile claims subject to the provisions of this practice direction.
- 1.4 For the purposes of the CPR the list of a Mercantile Court and the Business list of an authorised county court is a specialist list (see eg. CPR rules 2.3(2) and 16.3(5)(d)).

Commencement of Proceedings:

High Court

- 2.1 A mercantile claim intended to be entered in the commercial list of the Commercial Court Queen’s Bench Division should be begun by a claim form issued out of the Admiralty and Commercial Registry at the Royal Courts of Justice. (For further information reference should be made to the Commercial Court Practice Direction supplemental to CPR Part 49 and to the Commercial Court Guide).
- 2.2
 - (1) If a claimant wants a mercantile claim to be entered in the list of a Mercantile Court the claim should be begun by a claim form issued out of the district registry of the Mercantile Court in question and marked with the words “Queen’s Bench Division, _____ District Registry, Mercantile Court”.
 - (2) On the issue out of the said registry of a claim form so marked, the claim will be entered in the list of that Mercantile Court.
 - (3) Where a claim form is to be marked as mentioned in sub-paragraph (2), any application before the issue of the claim form should be made to a judge of that Mercantile Court.

- (4) If an application is made before the issue of the claim form, the written evidence in support of the application must state, in addition to any other necessary matters, that the claimant intends to mark the claim form in accordance with sub-paragraph (1).
- (5) If the mercantile judge hearing an application made before the issue of the claim form is of opinion that the claim should not be entered in the list of the Mercantile Court in question, he may adjourn the application to be heard by another judge or hear the application and direct that when the claim form is issued the claim should not be entered in that list.

County Court

- 2.3 (1) If a claimant wants a mercantile claim to be entered in the Business list of an authorised county court, the mercantile claim should be begun by a claim form issued out of the office of the county court in question and should be marked “_____ County Court, Business list”.
- (2) A claim form should not be issued and marked as mentioned in sub-paragraph (1) unless the mercantile claim has some connection with the Circuit in which the county court office is situated, for example, because:-
 - (i) the balance of convenience points to having the mercantile claim tried in that county court, or
 - (ii) the commercial or business transaction in question took place within the Circuit in which the county court is situated or one of the parties resides or carries on business within that Circuit.
- (3) Where the value of a mercantile claim does not exceed £15,000, a mercantile claim may not be issued and marked as mentioned in sub-paragraph (1) except with the permission of a mercantile judge of the county court in question.
- (4) A mercantile claim issued and marked as mentioned in sub-paragraph (1) will be entered in the Business list of the county court in question.
- (5) Where a claim form is to be issued and marked as mentioned in sub-paragraph (1), any application before the issue of the claim form should be made to a mercantile judge of the county court in question.
- (6) If an application is made before the issue of the claim form the written evidence in support of the application must state, in addition to any other necessary matters, that the claimant intends to issue and mark the claim form in accordance with sub-paragraph (1).
- (7) If the mercantile judge hearing an application made before the issue of the claim form is of opinion that the claim should not be entered in the Business list of the county court in question, he may adjourn the application to be heard by another judge or hear the application and direct that when the claim form is issued the claim should not be entered in the Business list.

Transfer

- 3.1 Where mercantile proceedings are entered in the list of a Mercantile Court or in the Business list of an authorised county court, the provisions of CPR rule 26.2 (automatic transfer) do not apply.
- 3.2 At any stage in the course of mercantile proceedings not entered in the list of a Mercantile Court or the Business list of an authorised county court, any party may apply for an order transferring the case to a Mercantile Court or to the Business list of an authorised county court.
- 3.3 An application under paragraph 3.2 -
 - (1) may be made to a mercantile judge of the court to which it is proposed the case should be transferred; or
 - (2) may be made to the court where the mercantile proceedings are being dealt with.
- 3.4 The court where the mercantile proceedings are being dealt with may not itself make an order for transfer but, if it considers the case might be suitable to be dealt with by a Mercantile Court or in the Business list of an authorised county court, it may
 - (1) on an application under paragraph 3.3(2) adjourn the application for hearing by a mercantile judge of the court to which it is proposed the case should be transferred; or
 - (2) on its own initiative refer the case to a mercantile judge of that court for a decision as to whether an order for transfer should be made.
- 3.5 Where all parties consent to the transfer, an application for transfer should be made by letter addressed to the listing officer of the Mercantile Court or the authorised county court, as the case may be, enclosing the written consents of the other parties and the claim form and statements of case. The letter should state why the case is suitable for the Mercantile Court or, as the case may be, for the Business list of the authorised county court.
- 3.6 Where a mercantile judge orders mercantile proceedings to be transferred to the list of a Mercantile Court, or to the Business list of an authorised county court, he may at the same time give directions for the management of the case.
- 3.7 A mercantile judge may, on his own initiative (but not unless the parties have had an opportunity of making submissions), or on the application of any party, order a case in the list of a Mercantile Court or in the Business list of an authorised county court to be removed from that list and may at the same time give case management directions.
- 3.8 Where a case is in the list of a Mercantile Court by virtue of paragraph 2.2(2) or in a Business list by virtue of paragraph 2.3(4), an application by a defendant, including a Part 20 defendant, to remove it from that list must be made within 7 days after the defendant has filed an acknowledgement of service or a defence, whichever is the later.

- 3.9 Where proceedings in the Business list of an authorised county court are removed from that list, the mercantile judge may at the same time:-
- (1) make an order allocating the proceedings to a track in accordance with CPR Part 26; or
 - (2) give directions for the purposes of allocation; and
 - (3) give case management directions.

Dispensing with Particulars of Claim or Defence

4. A mercantile judge may at any time, before or after the issue of the claim form, order that a case in the list of a Mercantile Court or in the Business list of an authorised county court be tried without the filing or service of particulars of claim or of a defence or of any other statement of case, but if such an order is made without any other party having had an opportunity to be heard that party may apply for it to be revoked.

Directions and Case Management

- 5.1 All cases in the list of a Mercantile Court or in the Business list of an authorised county court will be allocated to the multi-track. Subject to paragraph 3.9, the CPR rules relating to allocation questionnaires and to track allocation will not apply to them. They will be subject to case management by the court.
- 5.2
 - (1) If mercantile proceedings are transferred to a Mercantile Court or a Business list under paragraph 3 then, unless the mercantile judge who made the order for transfer gave directions for the management of the case, an application to a mercantile judge for such directions shall be made within 14 days of the date of the order of transfer.
 - (2) If the claimant does not make an application in accordance with sub-paragraph (1), any other party may do so or may apply for the claim of the claimant in default to be struck out.
- 5.3
 - (1) Subject to sub-paragraphs (2) and (3), interim applications in and trials of proceedings in a Mercantile Court or the Business list of an authorised county court shall be dealt with or heard, as the case may be, by a mercantile judge of the court in question;
 - (2) When an interim application needs to be dealt with urgently and a mercantile judge of the court in question is not available, the application may be dealt with by another judge, including a district judge.
 - (3) When the hearing of an application would involve the mercantile judge becoming aware of any matter which might embarrass him as the potential trial judge and there is no other mercantile judge of the court in question available to hear the application, the application may be heard by another judge, including a district judge.

- (4) Matters concerning the enforcement of any judgment given in proceedings in a Mercantile Court or in the Business list of an authorised county court may be, and ordinarily will be, dealt with by a district judge.
 - (5) Subject to any express provision in a statute, rule or practice direction, sub-paragraphs (2), (3) and (4) above do not apply to applications for injunctions, freezing orders, search orders, committal or sequestration of assets.
 - (6) Nothing in this paragraph shall be construed as preventing the powers of a mercantile judge from being exercised by any judge of the High Court.
- 5.4 Paragraph 5 of the Practice Direction - The Multi-Track - supplementing CPR Part 29 applies to case management conferences in proceedings in a Mercantile Court or in the Business list of an authorised county court.
- 5.5 It is intended that a Mercantile Courts and Business Lists Guide will be prepared after consultation with the judges of the Mercantile Courts, the judges of the Central London County Court Business List and their respective Users Committees, and that the Guide will set out any special procedures to apply to the conduct of proceedings in Mercantile Courts and the Business lists of authorised county courts. In the meantime the practice set out in any “approved Guide” (see paragraph 5.6 below) should be followed subject to the provisions of this or any other Mercantile Courts and Business Lists practice direction and to any order that may be made in an individual case.
- 5.6 (1) In relation to mercantile proceedings in any Mercantile Court or in the Business List of the Central London County Court, an “approved Guide” is a Guide that has been approved by the Head of Civil Justice for the purpose of mercantile proceedings in that court or in that list.
- (2) In relation to any Mercantile Court or Business list in respect of which there is for the time being no “approved Guide”, Section D of the Commercial Court Guide, 5th Edition, relating to Case Management in the Commercial Court, shall be treated as the “approved Guide” for the purpose of mercantile proceedings in that court or in that list.

Arbitration Applications and Proceedings

- 6.1 An arbitration application (as defined in paragraph 2 of the Arbitration Practice Direction supplemental to CPR Part 49) and proceedings to enforce an award under section 26 of the Arbitration Act 1950 or under sections 66 or 101(2) of the Arbitration Act 1996, shall be treated as mercantile claims for the purposes of this practice direction and may be included in the mercantile list of a Mercantile Court or the Business list of an authorised county court.
- 6.2 A mercantile judge may also deal with any other application under the Arbitration Act 1979 which may be commenced in or transferred to the mercantile list of a Mercantile Court or the Business list of an authorised county court.

- 6.3 The provisions of the Arbitration Practice Direction supplemental to CPR Part 49 apply to such applications and proceedings.

Repeal of Previous Local Directions or Guides

7. This practice direction supersedes as from 26 April 1999 any local practice directions or Guides applicable to mercantile proceedings in any Mercantile Court or in the Business List of the Central London County Court.