

PRACTICE DIRECTION – COMMERCIAL COURT

THIS PRACTICE DIRECTION SUPPLEMENTS PART 58

GENERAL

- 1.1 This practice direction applies to commercial claims proceeding in the commercial list of the Queen’s Bench Division. It supersedes all previous practice directions and practice statements in the Commercial Court.
- 1.2 All proceedings in the commercial list, including any appeal from a judgment, order or decision of a master or district judge before the proceedings were transferred to the Commercial Court, will be heard or determined by a Commercial Court judge, except that –
 - (1) another judge of the Queen’s Bench Division or Chancery Division may hear urgent applications if no Commercial Court judge is available; and
 - (2) unless the court otherwise orders, any application relating to the enforcement of a Commercial Court judgment or order for the payment of money will be dealt with by a master of the Queen’s Bench Division or a district judge.
- 1.3 Provisions in other practice directions which refer to a master or district judge are to be read, in relation to claims in the commercial list, as if they referred to a Commercial Court judge.
- 1.4 The Admiralty and Commercial Registry in the Royal Courts of Justice is the administrative office of the court for all proceedings in the commercial list.

STARTING PROCEEDINGS IN THE COMMERCIAL COURT

- 2.1 Claims in the Commercial Court must be issued in the Admiralty and Commercial Registry.
- 2.2 When the Registry is closed, a request to issue a claim form may be made by fax, using the procedure set out in Appendix A to this practice direction. If a request is made which complies with that procedure, the claim form is issued when the fax is received by the Registry.
- 2.3 The claim form must be marked in the top right hand corner ‘Queen’s Bench Division, Commercial Court’.
- 2.4 A claimant starting proceedings in the commercial list, other than an arbitration claim, must use practice form N1(CC) for Part 7 claims or practice form N208(CC) for Part 8 claims.

APPLICATIONS BEFORE PROCEEDINGS ARE ISSUED

- 3.1 A party who intends to bring a claim in the commercial list must make any application before the claim form is issued to a Commercial Court judge.

- 3.2 The written evidence in support of such an application must state that the claimant intends to bring proceedings in the commercial list.
- 3.3 If the Commercial Court judge hearing the application considers that the proceedings should not be brought in the commercial list, he may adjourn the application to be heard by a master or by a judge who is not a Commercial Court judge.

TRANSFERRING PROCEEDINGS TO OR FROM THE COMMERCIAL COURT

- 4.1 If an application is made to a court other than the Commercial Court to transfer proceedings to the commercial list, the other court may –
 - (1) adjourn the application to be heard by a Commercial Court judge; or
 - (2) dismiss the application.
- 4.2 If the Commercial Court orders proceedings to be transferred to the commercial list –
 - (1) it will order them to be transferred to the Royal Courts of Justice; and
 - (2) it may give case management directions.
- 4.3 An application by a defendant, including a Part 20 defendant, for an order transferring proceedings from the commercial list should be made promptly and normally not later than the first case management conference.

ACKNOWLEDGMENT OF SERVICE

- 5.1 For Part 7 claims, a defendant must file an acknowledgment of service using practice form N9 (CC).
- 5.2 For Part 8 claims, a defendant must file an acknowledgment of service using practice form N210 (CC).

DEFAULT JUDGMENT AND ADMISSIONS

6. The practice directions supplementing Parts 12 and 14 apply with the following modifications –
 - (1) paragraph 4.1(1) of the practice direction supplementing Part 12 is to be read as referring to the service of the claim form; and
 - (2) the references to ‘particulars of claim’ in paragraphs 2.1, 3.1 and 3.2 of the practice direction supplementing Part 14 are to be read as referring to the claim form.

VARIATION OF TIME LIMITS

- 7.1 If the parties, in accordance with rule 2.11, agree in writing to vary a time limit, the claimant must notify the court in writing, giving brief written reasons for the agreed variation.

- 7.2 The court may make an order overriding an agreement by the parties varying a time limit.

AMENDMENTS

8. Paragraph 2.2 of the practice direction supplementing Part 17 is modified so that amendments to a statement of case must show the original text, unless the court orders otherwise.

SERVICE OF DOCUMENTS

9. Unless the court orders otherwise, the Commercial Court will not serve documents or orders and service must be effected by the parties.

CASE MANAGEMENT

- 10.1 The following parts only of the practice direction supplementing Part 29 apply –
- (1) paragraph 5 (case management conferences), excluding paragraph 5.9 and modified so far as is made necessary by other specific provisions of this practice direction; and
 - (2) paragraph 7 (failure to comply with case management directions).
- 10.2 If the proceedings are started in the commercial list, the claimant must apply for a case management conference –
- (a) for a Part 7 claim, within 14 days of the date when all defendants who intend to file and serve a defence have done so; and
 - (b) for a Part 8 claim, within 14 days of the date when all defendants who intend to serve evidence have done so.
- 10.3 If the proceedings are transferred to the commercial list, the claimant must apply for a case management conference within 14 days of the date of the order transferring them, unless the judge held, or gave directions for, a case management conference when he made the order transferring the proceedings.
- 10.4 Any party may, at a time earlier than that provided in paragraphs 10.2 or 10.3, apply in writing to the court to fix a case management conference.
- 10.5 If the claimant does not make an application in accordance with paragraphs 10.2 or 10.3, any other party may apply for a case management conference.
- 10.6 The court may fix a case management conference at any time on its own initiative. If it does so, the court will give at least 7 days notice to the parties, unless there are compelling reasons for a shorter period of notice.
- 10.7 Not less than 7 days before a case management conference, each party must file and serve –
- (1) a completed case management information sheet; and

- (2) an application notice for any order which that party intends to seek at the case management conference, other than directions referred to in the case management information sheet.
- 10.8 Unless the court orders otherwise, the claimant, in consultation with the other parties, must prepare –
- (1) a case memorandum, containing a short and uncontroversial summary of what the case is about and of its material case history;
 - (2) a list of issues, with a section listing important matters which are not in dispute; and
 - (3) a case management bundle containing –
 - (a) the claim form;
 - (b) all statements of case (excluding schedules), except that, if a summary of a statement of case has been filed, the bundle should contain the summary, and not the full statement of case;
 - (c) the case memorandum;
 - (d) the list of issues;
 - (e) the case management information sheets and, if a pre-trial timetable has been agreed or ordered, that timetable;
 - (f) the principal orders of the court; and
 - (g) any agreement in writing made by the parties as to disclosure, and provide copies of the case management bundle for the court and the other parties at least 7 days before the first case management conference or any earlier hearing at which the court may give case management directions.
- 10.9 The claimant, in consultation with the other parties, must revise and update the documents referred to in paragraph 10.8 appropriately as the case proceeds. This must include making all necessary revisions and additions at least 7 days before any subsequent hearing at which the court may give case management directions.

PRE-TRIAL REVIEW

- 11.1 At any pre-trial review or case management hearing, the court will ensure that case management directions have been complied with and give any further directions for the trial that are necessary.
- 11.2 Advocates who are to represent the parties at the trial should represent them at the pre-trial review and any case management hearing at which arrangements for the trial are to be discussed.
- 11.3 Before the pre-trial review, the parties must discuss and, if possible, agree a draft written timetable for the trial.

- 11.4 The claimant must file a copy of the draft timetable for the trial at least two days before the hearing of the pre-trial review. Any parts of the timetable which are not agreed must be identified and short explanations of the disagreement must be given.
- 11.5 At the pre-trial review, the court will set a timetable for the trial, unless a timetable has already been fixed or the court considers that it would be inappropriate to do so or appropriate to do so at a later time.

CASE MANAGEMENT WHERE THERE IS A PART 20 CLAIM

- 12. Paragraph 5 of the practice direction supplementing Part 20 applies, except that, unless the court otherwise orders, the court will give case management directions for Part 20 claims at the same case management conferences as it gives directions for the main claim.

EVIDENCE FOR APPLICATIONS

- 13.1 The general requirement is that, unless the court orders otherwise –
 - (1) evidence in support of an application must be filed and served with the application (see rule 23.7(3));
 - (2) evidence in answer must be filed and served within 14 days after the application is served; and
 - (3) evidence in reply must be filed and served within 7 days of the service of evidence in answer.
- 13.2 In any case in which the application is likely to require an oral hearing of more than half a day the periods set out in paragraphs 13.1(2) and (3) will be 28 days and 14 days respectively.
- 13.3 If the date fixed for the hearing of an application means that the times in paragraphs 13.1(2) and (3) cannot both be achieved, the evidence must be filed and served –
 - (1) as soon as possible; and
 - (2) in sufficient time to ensure that the application may fairly proceed on the date fixed.
- 13.4 The parties may, in accordance with rule 2.11, agree different periods from those in paragraphs 13.1(2) and (3) provided that the agreement does not affect the date fixed for the hearing of the application.

JUDGMENTS AND ORDERS

- 14.1 An application for a consent order must include a draft of the proposed order signed on behalf of all parties to whom it relates (see paragraph 10.4 of the practice direction supplementing Part 23).

- 14.2 Judgments and orders are generally drawn up by the parties (see rule 58.15). The parties are not therefore required to supply draft orders on disk (see paragraph 12.1 of the practice direction supplementing Part 23).

APPENDIX A

PROCEDURE FOR ISSUE OF CLAIM FORM WHEN REGISTRY IS CLOSED – PARAGRAPH 2.2

1. A request to issue a claim form may be made by fax when the Registry is closed, provided that –
 - (a) the claim form is signed by a solicitor acting on behalf of the claimant; and
 - (b) it does not require the permission of the court for its issue (unless such permission has already been given).
2. The solicitor requesting the issue of the claim form ('the issuing solicitor') must –
 - (a) endorse on the claim form and sign the endorsement set out below;
 - (b) send a copy of the claim form so endorsed to the Registry by fax for issue under paragraph 2.2 of this practice direction; and
 - (c) complete and sign a certificate in the form set out below, certifying that he has received a transmission report confirming that the fax has been transmitted in full, and stating the time and date of transmission.
3. When the Registry is next open to the public after the issue of a claim form in accordance with this procedure, the issuing solicitor or his agent must attend and deliver to the Registry –
 - (a) the original of the claim form which was sent by fax (including the endorsement and the certificate) or, if the claim form has been served, a true and certified copy of it;
 - (b) as many copies of the claim form as the Registry requires; and
 - (c) the transmission report.
4. When a court officer at the Registry has checked that –
 - (a) the claim form delivered under paragraph 3 matches the claim form received by fax; and
 - (b) the correct issue fee has been paid,

he will allocate a number to the case, and seal, mark as 'original' and date the claim form with the date of issue (being the date when the fax is recorded at the Registry as having been received).
5. If the issuing solicitor has served the unsealed claim form on any person, he must as soon as practicable –
 - (a) inform that person of the case number; and
 - (b) if requested, serve him with a copy of the sealed and dated claim form at any address in England and Wales.

6. Any person served with a claim form issued under this procedure may, without paying a fee, inspect and take copies of the documents lodged at the Registry under paragraphs 2 and 3 above.
7. The issue of a claim form in accordance with this procedure takes place when the fax is recorded at the Registry as having been received, and the claim form has the same effect for all purposes as a claim form issued under Part 7 or 8. Unless the court otherwise orders, the sealed version of the claim form retained by the Registry is conclusive proof that the claim form was issued at the time and on the date stated.
8. If the procedure set out in this Appendix is not complied with, the court may declare that a claim form shall be treated as not having been issued.

Endorsement

A claim form issued pursuant to a request by fax must be endorsed as follows:

- (1) This claim form is issued under paragraph 2.2 of the Commercial Court practice direction and may be served notwithstanding that it does not bear the seal of the Court.
- (2) A true copy of this claim form and endorsement has been sent to the Admiralty and Commercial Registry, Royal Courts of Justice, Strand, London WC2A 2LL, at the time and date certified below by the solicitor whose name appears below ('the issuing solicitor').
- (3) It is the duty of the issuing solicitor or his agent to attend at the Registry when it is next open to the public for the claim form to be sealed.
- (4) Any person served with this unsealed claim form –
 - (a) will be notified by the issuing solicitor of the case number;
 - (b) may require the issuing solicitor to serve him with a copy of the sealed claim form at an address in England and Wales; and
 - (c) may inspect without charge the documents lodged at the Registry by the issuing solicitor.
- (5) I, the issuing solicitor, undertake [to the Court, to the defendants named in this claim form, and to any other person served with this claim form] –
 - (a) that the statement in paragraph 2 above is correct;
 - (b) that the time and date given in the certificate with this endorsement are correct;
 - (c) that this claim form is a claim form which may be issued under paragraph 2.2 and Appendix A of the Commercial Court practice direction;

- (d) that I will comply in all respects with the requirements of Appendix A of the Commercial Court practice direction; and
- (e) that I will indemnify any person served with the claim form before it is sealed against any loss suffered as a result of the claim form being or becoming invalid as a result of any failure to comply with Appendix A of the Commercial Court practice direction.

(Signed)

Solicitor for the claimant

[Note: the endorsement may be signed in the name of the firm of solicitors rather than an individual solicitor, or by solicitors' agents in their capacity as agents acting on behalf of their professional clients.]

Certificate

The issuing solicitor must sign a certificate in the following form –

I certify that I have received a transmission report confirming that the transmission of a copy of this claim form to the Registry by fax was fully completed and that the time and date of transmission to the Registry were *[enter the time and date shown on the transmission report]*.

Dated

(Signed)

Solicitor for the claimant

[Note: the certificate must be signed in the name of the firm of solicitors rather than an individual solicitor, or by solicitors' agents in their capacity as agents acting on behalf of their professional clients.]