

PRACTICE DIRECTION – MERCANTILE COURTS

THIS PRACTICE DIRECTION SUPPLEMENTS PART 59

General

- 1.1 This practice direction applies to mercantile claims.
- 1.2 Mercantile Courts are established in –
 - (1) the following district registries of the High Court – Birmingham, Bristol, Cardiff, Chester, Leeds, Liverpool, Manchester and Newcastle; and
 - (2) the Central London County Court (previously called the Business List and now called the Mercantile List).
- 1.3 All mercantile claims will be heard or determined by a Mercantile judge, except that –
 - (1) an application may be heard and determined by any other judge who, if the claim were not a mercantile claim, would have jurisdiction to determine it, if –
 - (a) the application is urgent and no Mercantile judge is available to hear it; or
 - (b) a Mercantile judge directs it to be heard by another judge; and
 - (2) unless the court otherwise orders, all proceedings for the enforcement of a Mercantile Court judgment or order for the payment of money will be dealt with by a district judge.
- 1.4 Provisions in other practice directions which refer to a master or district judge are to be read, in relation to mercantile claims, as if they referred to a Mercantile judge.

Starting proceedings in a Mercantile Court

- 2.1 A claim should only be started in a Mercantile Court if it will benefit from the expertise of a Mercantile judge.
- 2.2 The claim form must be marked in the top right hand corner 'Queen's Bench Division, _____ District Registry, Mercantile Court' or 'Central London County Court, Mercantile List' as appropriate.
- 2.3 A claim having a value less than £15,000 may not be issued in the Mercantile List at the Central London County Court without permission of the court.
- 2.4 A claim may be issued in the Mercantile List at the Central London County Court provided it has some connection with the South Eastern Circuit, for example, because –
 - (1) it is convenient for the claim to be dealt with in that court;

- (2) the claim arises out of a transaction which took place within that circuit; or
- (3) one of the parties resides or carries on business within that circuit.

Applications before proceedings are issued

- 3.1 A party who intends to bring a claim in a Mercantile Court must make any application before the claim form is issued to a judge of that court.
- 3.2 The written evidence in support of such an application should show why the claim is suitable to proceed as a mercantile claim.

Transfer of proceedings to or from a Mercantile Court

- 4.1 If a claim which has not been issued in a Mercantile Court is suitable to continue as a mercantile claim –
 - (1) any party wishing the claim to be transferred to a Mercantile Court may make an application for transfer to the court to which transfer is sought;
 - (2) if all parties consent to the transfer, the application may be made by letter to the mercantile listing officer of the court to which transfer is sought, stating why the case is suitable to be transferred to that court and enclosing the written consents of the parties, the claim form and statements of case.
- 4.2 If an application for transfer is made to a court which does not have power to make the order, that court may –
 - (1) adjourn the application to be heard by a Mercantile judge; or
 - (2) dismiss the application.
- 4.3 A Mercantile judge may make an order under rule 59.3 of his own initiative.

Default judgment and admissions

- 5. 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 by agreement

- 6.1 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.

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

Case management

- 7.1 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).
- 7.2 If proceedings are started in a Mercantile Court, the claimant must apply for a case management conference –
- (1) 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
 - (2) for a Part 8 claim, within 14 days of the date when all defendants who intend to serve evidence have done so.
- 7.3 If proceedings are transferred to a Mercantile Court, the claimant must apply for a case management conference within 14 days of receiving an acknowledgment of the transfer from the receiving court, unless the judge held, or gave directions for, a case management conference when he made the order transferring the proceedings.
- 7.4 Any party may, at a time earlier than that provided in paragraphs 7.2 or 7.3, apply in writing to the court to fix a case management conference.
- 7.5 If the claimant does not make an application in accordance with paragraphs 7.2 or 7.3, any other party may apply for a case management conference.
- 7.6 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.
- 7.7 Not less than 7 days before a case management conference –
- (1) each party shall file and serve –
 - (a) a case management information sheet substantially in the form set out at Appendix A to this practice direction; and
 - (b) 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; and
 - (2) the claimant (or other party applying for the conference) shall in addition file and serve –
 - (a) a case management file containing –
 - the claim form;

- the statements of case (excluding schedules of more than 15 pages);
 - any orders already made;
 - the case management information sheets; and
 - a short list of the principal issues to be prepared by the claimant; and
- (b) a draft order substantially in the form set out at Appendix B to this practice direction, setting out the directions which that party thinks appropriate.

7.8 In appropriate cases –

- (1) the parties may, not less than 7 days before the date fixed for the case management conference, submit agreed directions for the approval of the judge;
- (2) the judge will then either –
 - (a) make the directions proposed; or
 - (b) make them with alterations; or
 - (c) require the case management conference to proceed; but
- (3) the parties must assume that the conference will proceed until informed to the contrary.

7.9 If the parties submit agreed directions and the judge makes them with alterations, any party objecting to the alterations may, within 7 days of receiving the order containing the directions, apply to the court for the directions to be varied.

7.10 The directions given at the case management conference –

- (1) will normally cover all steps in the case through to trial, including the fixing of a trial date or window, or directions for the taking of steps to fix the trial date or window; and
- (2) may include the fixing of a progress monitoring date or dates, and make provision for the court to be informed as to the progress of the case at the date or dates fixed.

7.11 If the court fixes a progress monitoring date, it may after that date fix a further case management conference or a pre-trial review on its own initiative if –

- (1) no or insufficient information is provided by the parties; or
- (2) it is appropriate in view of the information provided.

Pre-trial review and questionnaire

8.1 The court may order a pre-trial review at any time.

8.2 Each party must file and serve a completed pre-trial check list substantially in the form set out in Appendix C to this practice direction –

- (1) if a pre-trial review has been ordered, not less than 7 days before the date of the review; or
- (2) if no pre-trial review has been ordered, not less than 6 weeks before the trial date.

8.3 When pre-trial check lists are filed under paragraph 8.2(2) –

- (1) the judge will consider them and decide whether to order a pre-trial review; and
- (2) if he does not order a pre-trial review, he may on his own initiative give directions for the further preparation of the case or as to the conduct of the trial.

8.4 At a pre-trial review –

- (1) the parties should if possible be represented by the advocates who will be appearing at the trial;
- (2) any representatives appearing must be fully informed and authorised for the purposes of the review; and
- (3) the court will give such directions for the conduct of the trial as it sees fit.

Evidence for applications

9.1 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;
- (3) evidence in reply must be filed and served within 7 days of the service of the evidence in answer.

9.2 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 9.1(2) and (3) will be 28 days and 14 days respectively.

9.3 If the date fixed for the hearing of the application means that the times in paragraphs 9.1(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.

9.4 The parties may, in accordance with rule 2.11, agree different periods from those provided above, provided that the agreement does not affect the ability to proceed on the date fixed for the hearing of the application.

Files for applications

10. Before the hearing of any application, the applicant must –
 - (1) provide to the court and each other party an appropriate indexed file for the application with consecutively numbered pages; and
 - (2) attach to the file an estimate of the reading time required by the judge.

Judgments and orders

- 11.1 After any hearing the claimant must draw up a draft order, unless the decision was made on the application of another party in which case that party must do so.
- 11.2 A draft order must be submitted by the party responsible for drawing it up within 3 clear days of the decision, with sufficient copies for each party and for one to be retained by the court.
- 11.3 The sealed orders will be returned to the party submitting them, who will be responsible for serving the order on the other parties.
- 11.4 Orders must be dated with the date of the decision, except for consent orders submitted for approval, which must be left undated.