

PRACTICE DIRECTION 59

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, Mold and Newcastle upon Tyne; and
 - (2) the Commercial Court of the Queen’s Bench Division at the Royal Courts of Justice (called ‘The London Mercantile Court’).
- 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 ‘Queen’s Bench Division, The London Mercantile Court’ as appropriate.
- 2.3** Omitted
- 2.4** Omitted

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 Practice Direction 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 Practice Direction 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 Practice Direction 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.

Annex A

Case Management Information Sheet - Mercantile Courts

[Title of Case]

This information sheet must be filed with Mercantile Listing at least 7 days before the Case Management Conference, and copies served on all other parties: see paragraph 7.7 of the Mercantile Courts Practice Direction.

Party filing:
Solicitors:
Advocate(s) for trial:
Date:

Substance of case

1. What in about 20 words maximum is the case about?
Please provide a separate concise list of issues in a complex case.

Parties

2. Are all parties still effective?
3. Do you intend to add any further party?

Statements of case

4. Do you intend to amend your statement of case?
5. Do you require any "further information" - see CPR 18?

Disclosure

6. By what date can you give standard disclosure?
7. Do you contend that to search for any type of document falling within CPR 31.6(b) would be unreasonable within CPR 31.7(2); if so, what type and on what grounds?
8. Is any specific disclosure required - CPR 31.12?
9. Is a full disclosure order appropriate?
10. By what dates could you give:
 - (i) any specific disclosure referred to at 8; and
 - (ii) full disclosure?

Admissions

11. Can you make any additional admissions?

Preliminary issues

12. Are any issues suitable for trial as preliminary issues? If yes, which?

Witnesses of fact

13. On how many witnesses of fact do you intend to rely at the trial (subject to the court's direction)?
14. Please name them, or explain why you do not.
15. Which of them will be called to give oral evidence?
16. When can you serve their witness statements?
17. Will any require an interpreter?

Expert evidence

18. Are there issues requiring expert evidence?
19. If yes, what issues?
20. Might a single joint expert be suitable on any issues (see CPR 35.7)?
21. What experts do you intend (subject to the court's direction) to call? Please give the number, their names and expertise.
22. By what date can you serve signed expert reports?
23. Should there be meetings of experts of like disciplines, of all disciplines? By when?
24. Which experts, if any, do you intend not to call at the trial?

25. Will any require an interpreter?

Trial

- 26. What are the advocates' present estimates of the length of the trial?
- 27. What is the earliest date that you think the case can be ready for trial?
- 28. Where should the trial be held?
- 29. Is a Pre-Trial Review advisable?

A.D.R.

- 30. Might some form of Alternative Dispute Resolution assist to resolve the dispute or some part of it?
- 31. Has this been considered with the client?
- 32. Has this been considered with the other parties?
- 33. Do you want the case to be stayed pending A.D.R. or other means of settlement - CPR 26.4; or any other directions relating to A.D.R.?

Other applications

- 34. What applications, if any, not covered above, will you be making at the conference?

Costs

- 35. What, do you estimate, are your costs to date?
- 36. What, do you estimate, will be your costs to end of trial?

[Signature of party/solicitor]

Annex B

Standard Directions in Mercantile Courts

[Title of case with Judge's name]

Order for Directions

made on []

1. Standard disclosure is to be made by [].
Inspection on 48 hours notice to be completed by [].
2. Signed statements of witnesses of fact, and hearsay notices when required by CPR 33.2, are to be exchanged not later than [].

Unless otherwise ordered, the witness statements are to stand as the evidence in chief of the witnesses at trial.

3. Each party has permission to call at the trial expert witnesses as follows:

<u>Number</u>	<u>Expertise</u>	<u>Issue(s) to be covered</u>
---------------	------------------	-------------------------------

whose reports are to be exchanged by [].

4. Experts of like disciplines are to:
 - (i) meet without prejudice by [] to identify the issues between them and to attempt to reach agreement on such issues, and
 - (ii) prepare a joint statement pursuant to CPR 35.12(3), by [].

or

3. Expert evidence in the following field(s) of expertise is limited to a written report by a single expert jointly instructed by the parties:

<u>Expertise</u>	<u>Issue(s) to be covered</u>
------------------	-------------------------------

4.
 - (i) The report of the single joint expert is to be produced by [].
 - (ii) Any questions to the expert are to be presented to him by [] and answered by [].
 - (iii) Any party may apply not later than [] for an order that the expert witness shall give oral evidence at the trial.
5. The case will be tried in [] by judge alone, estimated length of trial [] days, [commencing on [] [not before []].
[The claimant is to apply to the mercantile listing officer to fix a date for the trial, not later than [], specifying dates which any party wishes to avoid.]

- [6 . The progress monitoring date is []. Each party is to notify the court in writing by that date (with a copy to all other parties) of the progress of the case, including -
- (i) whether the directions have been complied with in all respects;
 - (ii) if any directions are outstanding, which of them and why; and
 - (iii) whether a further case management conference or a pre-trial review is required.]
7. There will be a pre-trial review on [].
[In the event of both parties notifying the court in writing not less than [] days before the pre-trial review that it is not required, then it will be vacated.]
8. Signed pre-trial check lists are to be filed and served by [] [not less than 7 days before the pre-trial review] [not less than 6 weeks before the trial date].
9. Trial bundles must be agreed, prepared and delivered to counsel not less than [] days before the trial date, and to the court not less than [] days before the trial date.
10. Costs in the case.

DATED

Annex C

Pre-trial Check List - Mercantile Courts

[Title of Case]

Where a Pre-trial Review has been ordered, this check list must be filed with Mercantile Listing not less than 7 days before the Pre-trial Review, and copies served on all other parties.

Where a Pre-trial Review has not been ordered, it must be filed and served not less than 6 weeks before the trial date .

See paragraph 8.2 of the Mercantile Courts Practice Direction.

- a. Trial Date:
- b. Whether Pre-trial Review ordered:
- c. Date of Review:
- d. Party lodging:
- e. Solicitors:
- f. Advocate(s) for trial:
- g. Date lodged:

[Note: this checklist should normally be completed with the involvement of the advocate(s) instructed for trial.]

- 1. Have all the directions made to date been carried out?
- 2. If not, what remains to be carried out? When will it be carried out?
- 3. Do you intend to take any further steps regarding:
 - (i) statements of case?
 - (ii) disclosure?
 - (iii) witnesses and witness statements?
 - (iv) experts and expert reports?If yes in any case, what and by when?
- 4. Will the preparation of trial bundles be completed not later than 3 weeks before the date fixed for trial? If not, what is the position?
- 5. What witnesses of fact do you intend to call?
- 6. (Where directions for expert evidence have been given) what experts do you intend to call?
- 7. Is any interpreter needed: for whom?
- 8. If a Pre-trial Review has not been ordered, do you think one would be useful?
- 9. What are the advocate(s)' confirmed estimates of the minimum and maximum lengths of the trial? A confirmed estimate signed by the advocate(s) and dated must be attached.
- 10.
 - (i) Might some form of alternative dispute resolution now assist?
 - (ii) Has the question been considered with the client?
 - (iii) Has the question been explored with the other parties to the case?

[Signature of party/solicitor]