

## 166<sup>TH</sup> UPDATE – PRACTICE DIRECTION AMENDMENTS

The new Practice Direction 51ZE, which supplements the Civil Procedure Rules 1998, is made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Lord Bellamy, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The new Practice Direction 51ZE – Small Claims Track Automatic Referral to Mediation Pilot Scheme, comes into force on 22nd May 2024.

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The Right Honourable Sir Geoffrey Vos  
Master of the Rolls and Head of Civil Justice

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Signed by authority of the Lord Chancellor:

Lord Bellamy

Parliamentary Under-Secretary of State for Justice

Ministry of Justice

Date: 15/04/2024

## **PRACTICE DIRECTION 51ZE – SMALL CLAIMS TRACK AUTOMATIC REFERRAL TO MEDIATION PILOT SCHEME**

- 1) After Practice Direction 51ZD, insert Practice Direction 51ZE as set out below.

### **“PRACTICE DIRECTION 51ZE – SMALL CLAIMS TRACK AUTOMATIC REFERRAL TO MEDIATION PILOT SCHEME**

#### **Scope and interpretation**

1. This Practice Direction is made under rule 51.2. It provides for a pilot scheme under which claims to which the pilot applies are to be referred automatically for mediation provided by the Mediation Service (which has the meaning given in rule 26.6(3)).
2. The pilot is to run from 22 May 2024 to 21 May 2026 and applies to claims issued on or after 22 May 2024.
3. The pilot applies to claims to which rule 26.6, as modified by this practice direction, applies.

#### **Modification of rules during the pilot**

4. During the pilot, the Civil Procedure Rules and practice directions will apply with the modifications set out in paragraphs 6 to 9 of this practice direction. Rules 26.6, 27.8, 27.14 and 45.13 and the relevant provision of Practice Direction 27A as so modified are set out in the annex to this practice direction.
5. For claims to which the pilot does not apply, the Civil Procedure Rules and practice directions will continue to apply without modification.
6. Modification of rule 26.6: Rule 26.6 is modified as follows—
  - (a) for paragraph (2) substitute—

“(2) This rule—

    - (a) applies where the only remedy claimed is, or purports to be, a judgment for a specified sum of money;
    - (b) does not apply to a claim which is started using Online Civil Money Claims; and
    - (c) does not in any event apply to road traffic accident or personal injury claims.”

(b) in paragraph (4), for the words “indicate” to “mediation” substitute “have filed their directions questionnaire”;

(c) after paragraph (5) insert—

“(6) If a claim to which this rule applies proceeds to a final hearing, the court must consider at that hearing whether any sanction is appropriate in all the circumstances having regard to whether the parties attended mediation provided by the Mediation Service.”.

7. Modification of rule 27.8: In rule 27.8, after paragraph (6) insert—

“(7) The court must consider whether any sanction is appropriate in all the circumstances having regard to whether the parties attended mediation provided by the Mediation Service.”.

8. Modification of rule 27.14: In rule 27.14, after paragraph (2) insert—

“(2A) When considering how to exercise its discretion to order or decline to order costs falling within paragraph (2) (including when considering under paragraph (2)(g) whether a party has behaved unreasonably), the court may also take into account any failure by a party to attend mediation provided by the Mediation Service under rule 26.6.”.

9. Modification of Practice Direction 27A: In Appendix B, for the first standard direction substitute—

“ 1. Each party must deliver to every other party and to the court office copies of all documents on which they intend to rely at the hearing no later than [ ] [14 days before the hearing]. (These should include the letter making the claim and the reply; and, if a party failed to attend mediation provided by the Mediation Service, that party’s explanation for that failure, and any other party’s comments on the matter, with any supporting documents.)”.

10. Modification of rule 45.13: After paragraph (2) insert—

“(2A) The court may also make an order under paragraph (1) or (2) on its own initiative in any case where rule 26.6(6) applies.”.

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## **ANNEX: RULES AS MODIFIED**

### **PART 26**

#### **Referral to the Mediation Service**

**26.6.—**(1) This rule applies to claims started in the County Court which would normally be allocated to the small claims track pursuant to rule 26.9.

(2) This rule—

- (a) applies where the only remedy claimed is, or purports to be, a specified sum of money;
- (b) does not apply to a claim which is started using Online Civil Money Claims; and
- (c) does not in any event apply to road traffic accident or personal injury claims.

(3) In this rule, 'the Mediation Service' means the Small Claims Mediation Service operated by His Majesty's Courts and Tribunals Service.

(4) Where all parties have filed their directions questionnaire, the claim will be referred to the Mediation Service.

(5) If a claim to which this rule applies is settled, the proceedings will automatically be stayed with permission to apply for—

(a) judgment for the unpaid balance of the outstanding sum of the settlement agreement; or

(b) the claim to be restored for hearing of the full amount claimed,

unless the parties have agreed that the claim is to be discontinued or dismissed.

(6) If a claim to which this rule applies proceeds to a final hearing, the court must consider at that hearing whether any sanction is appropriate in all the circumstances having regard to whether the parties attended mediation provided by the Mediation Service.

## **PART 27**

### **Conduct of the hearing**

**27.8.—**(1) The court may adopt any method of proceeding at a hearing that it considers to be fair.

(2) Hearings will be informal.

(3) The strict rules of evidence do not apply.

(4) The court need not take evidence on oath.

(5) The court may limit cross-examination.

(6) The court must give reasons for its decision.

(7) The court must consider whether any sanction is appropriate in all the circumstances having regard to whether the parties attended mediation provided by the Mediation Service.

### **Costs on the small claims track**

**27.14.—**(1) This rule applies to any case which has been allocated to the small claims track.

(Rules 46.11 and 46.13 make provision in relation to orders for costs made before a claim has been allocated to the small claims track)

(2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except—

(a) the fixed costs attributable to issuing the claim which—

(i) are payable under Part 45; or

(ii) would be payable under Part 45 if that Part applied to the claim;

(b) in proceedings which included a claim for an injunction or an order for specific performance a sum not exceeding the amount specified in Practice Direction 27A for legal advice and assistance relating to that claim;

(c) any court fees paid by that other party;

(d) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;

(e) a sum not exceeding the amount specified in Practice Direction 27A for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purposes of attending a hearing;

(f) a sum not exceeding the amount specified in Practice Direction 27A for an expert's fees;

(g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably;

(h) the Stage 1 and, where relevant, the Stage 2 fixed costs in rule 45.18 where—

(i) the claim was within the scope of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol') or the Pre-action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol');

(ii) the claimant reasonably believed that the claim was valued at more than the small claims track limit in accordance with paragraph 4.1(4) of the relevant Protocol; and

(iii) the defendant admitted liability under the process set out in the relevant Protocol; but

(iv) the defendant did not pay those Stage 1 and, where relevant, Stage 2 fixed costs; and

(i) in an appeal, the cost of any approved transcript reasonably incurred.

(2A) When considering how to exercise its discretion to order or decline to order costs falling within paragraph (2) (including when considering under paragraph (2)(g) whether a



**45.13.**—(1) Where, in a claim to which Section VI, Section VII or Section VIII of this Part applies, an order for costs is made in favour of a party whom the court considers has behaved unreasonably, the other party may apply for an order that those costs be reduced by an amount equivalent to 50% of the fixed recoverable costs which would otherwise be payable.

(2) Where, in a claim to which Section VI, Section VII or Section VIII of this Part applies, an order for costs is made against a party whom the court considers has behaved unreasonably, the other party may apply for an order that those costs be increased by an amount equivalent to 50% of the fixed recoverable costs which would otherwise be payable.

(2A) The court may also make an order under paragraph (1) or (2) on its own initiative in any case where rule 26.6(6) applies.

(3) In this rule—

(a) unreasonable behaviour is conduct for which there is no reasonable explanation; and

(b) “fixed recoverable costs which would otherwise be payable” does not include—

(i) VAT;

(ii) any additional amounts under rules 36.17 or 36.24; or

(iii) any disbursements.