

# **The Business and Property Courts**

## **Advisory Note**

*This note is likely to be updated on a regular basis*

### **Introduction**

1. The Business and Property Courts (“B&PCs”) were launched in July 2017 and became operational on 2<sup>nd</sup> October 2017. They have been created as a single umbrella for specialist civil jurisdictions across England and Wales. In London, these specialist civil jurisdictions operate together in the Rolls Building on Fetter Lane, forming the largest specialist centre for financial, business and property litigation in the world.
2. Business and Property Courts have also been established in the five main centres outside London where specialist business similar to that in the Rolls Building is undertaken, namely, Birmingham, Bristol, Cardiff, Leeds and Manchester. They will also be established in Newcastle and Liverpool shortly. The main centre for the Business and Property Courts in Wales is in Cardiff, but judges of the courts will sit in other venues in Wales when appropriate and practicable. Specialist County Court cases that fall within the ambit of the B&PCs will internally be marked “Business and Property Courts Work” (encompassing what was previously “Chancery Business” for specialist work of a Chancery nature and TCC work in the County Court (CPR PD 60 para 3.2; 3.4 and CPR 60.4(c))) (please see paragraph 4.3 of the draft practice direction which is awaiting publication but is attached in its current draft form). The Mercantile Court has been renamed the Circuit Commercial Court, and Mercantile Judges are now Circuit Commercial Judges.
3. The Business and Property Courts are divided into separate specialist courts or lists, some of which are further subdivided into sub-lists. These courts and lists are dealt with in more detail below.
4. Although the various specialist civil work has been brought together under one umbrella, the courts themselves will continue to operate in the same way as at present, applying the same practices and procedures under the Civil Procedure

Rules and Insolvency Rules as before and retaining their own procedural Guides. The way in which cases are dealt with in each type of court will not change. Claims which have been proceeding in the Chancery Division before 2<sup>nd</sup> October remain under the control of the same Master (or Judge) as before until further order. The Practice Direction setting up the Business and Property Courts contains new provisions, particularly as regards issue and transfer of proceedings (see paragraphs 13 to 19).

5. The new arrangements will allow, over time, for greater flexibility in cross-deployment of judges with suitable expertise and experience to sit on appropriate business and property cases. It will also be simpler to issue claims in any of the B&PCs and to transfer claims between the Rolls Building and the other specialist centres.

## **Issuing Proceedings in the Business and Property Courts**

6. Presently electronic filing and issue is only available in London. For the time being, claim forms should continue to be issued in the same way as before in the other Business and Property Courts centres.
7. The new types of case numbers (available on CE-File) will not, however, be provided in the other centres until electronic filing begins in those centres in 2018.
8. Court users will at present, when issuing proceedings electronically on CE-File, see the heading "Business and Property Courts of England and Wales" on the system. They will then be asked to say which court or list, and if applicable, which sub-list, they wish their case to be assigned to. This will depend on the principal subject matter of the dispute. For example, if the dispute involves land, even if the land is for commercial use, it should be assigned to the Property, Trusts and Probate List. Similarly, a dispute about pensions should be assigned to the Business List, sub-list Pensions, even if professional negligence is also involved. Where several issues arise, involving different courts, lists or sub-lists, the user must consider whether there are issues requiring the expertise of a specialist judge and if so must select the court, list or sub-list in which the relevant specialist judges sit.
9. Cases issued in centres outside London, after 2<sup>nd</sup> October 2017 and before electronic filing becomes available outside London, should identify the list or court in which the claimant wishes the case to proceed, as above. Users issuing in the

centres outside London will have to indicate on the claim form or to listing staff in those centres the court, list or sub-list to which their claim should be allocated.

10. Users must choose one of the following:

- (1) Admiralty Court (QBD)
- (2) Business List (ChD) (with further choice of Financial Services and Regulatory or Pensions sub-lists available)
- (3) Commercial Court (QBD) (with the option to issue in the London Circuit Commercial Court instead in London, or a single option of issuing in the Circuit Commercial Court in other centres)
- (4) Competition List (ChD)
- (5) Financial List (ChD/QBD)
- (6) Insolvency and Companies List (ChD) (with further option of Insolvency or Companies sub-lists)
- (7) Intellectual Property List (ChD) (with further choice of Patents Court or IPEC)
- (8) Property, Trusts and Probate List (ChD)
- (9) Revenue List (ChD)
- (10) Technology and Construction Court (QBD)

11. Once CE-File has been extended to the other centres, the user will also be asked to identify on CE-File the hearing centre in which they wish to issue the proceedings. In the meantime, users issuing in the centres outside London will have to issue in the centre on the circuit with which the claim has significant links. Links, as specified in the Practice Direction, are established where:

- a. one or more of the parties has an address or registered office in the circuit (particularly if the party is non-represented);
- b. at least one of the witnesses expected to give oral evidence is located within the circuit;
- c. the dispute occurred in a location within the circuit;
- d. the dispute concerns land, goods or other assets located in the circuit; or
- e. the parties' legal representatives are based in the circuit.

12. Claims with significant links to a particular circuit must be issued in the District Registry located in the circuit. Although a claimant must base a decision on any information available about links to a particular circuit, there is no obligation to make extra inquiries to determine whether there may be other links outside the claimant's current knowledge.
13. Care should be taken to ensure that any proceedings are brought in the correct court and hearing centre. If users are uncertain as to the availability of a specialist judge in an area they should contact the relevant Listing Office. It is important to note however that if a claim is issued in the wrong court, list or sub-list, or in the wrong hearing centre, this will not invalidate the issue of the claim. If there is such an error the court may remedy it by making an order under CPR rule 3.10(b).

## **The Constituent Courts and Lists**

14. In order to help users identify the correct court, list or sub-list in which to issue, a brief description of each one of the Business and Property Courts follows. The various examples of cases dealt with in each category are not exhaustive:

### **(1) Admiralty Court (QBD)**

The Admiralty Court deals with shipping and maritime disputes. This list deals with cases such as:

- collisions between ships
- disputes over the transport of cargo
- salvage of a ship, cargo or crew
- disputes over goods supplied to a ship
- disputes over mortgages and other security over ships
- claims by passengers for injuries suffered
- claims by ship crew for unpaid wages
- claims by ship-owners to limit liability for loss or damage

The Admiralty Court deals with claims brought against the owner of a ship ('in personam' claims) and claims brought against the ship itself ('in rem' claims). The court can seize ('arrest') ships and cargos to prevent them being moved and can also sell them within England and Wales.

## **(2) Business List (ChD)**

The scope of the Chancery Business List is broad. It includes a wide range business disputes, often with an international dimension. Frequently these concern a business structure (company, LLP, LP, partnership etc), claims against directors for breach of fiduciary duty, or disputes about contractual arrangements between investors such as share purchase agreements. They also include claims in tort, such as conspiracy or fraud, claims for professional negligence (e.g. against solicitors, accountants, surveyors, valuers), claims for breach of contract, specific performance, rectification and injunctive relief as well as other equitable remedies.

The Business List also includes pensions claims, and a sub-list exists to reflect that. The sub-list covers all claims where pensions are the subject matter of the dispute. Many pension schemes, particularly occupational pension schemes, are established under a trust. Not all pensions cases however are brought under the court's trusts jurisdiction. For example, trustees and/or employers may bring claims for professional negligence against former advisers, or action taken under statutory powers, for example by the Pensions Regulator, or statutory appeals, for example from the Pensions Ombudsman.

The Business List also includes a Financial Services and Regulatory sub-list, to cover financial claims where the Financial Conduct Authority is a party, claims under the Financial Services and Markets Act 2000, and claims involving regulators (other than the Pensions Regulator).

## **(3) Commercial Court (QBD)**

### **(a) Commercial Court**

The Commercial Court deals with complex cases arising out of business disputes, both national and international, encompassing all aspects of commercial disputes, in the fields of banking and finance, shipping, insurance and reinsurance and commodities. The Court also acts as a supervisory court for arbitration, dealing with the granting of freezing and other relief in aid of arbitration, challenges to arbitration awards and enforcement of awards.

This list deals with cases such as:

- disputes over contracts and business documents
- insurance and reinsurance
- sale of commodities
- import, export and transport ('carriage') of goods
- issues relating to international and commercial arbitration
- banking and financial services
- agency and management agreements
- sale and purchase of businesses and commercial share sale agreements
- oil, gas and energy disputes
- professional negligence in commercial circumstances

**(b) Circuit Commercial Court (QBD) (formerly the Mercantile Court)**

Formerly known as the Mercantile Court, it deals with business disputes of all kinds apart from those which, because of their size, value or complexity, will be heard by the Commercial Court. As well as large cases, it also decides smaller business disputes. There are no restrictions on the size of claims which can be brought to the Circuit Commercial Court. The Court also acts as a supervisory court for arbitration, dealing most often with the challenges to arbitration awards and enforcement of awards. Cases will ordinarily be heard if they are of a genuine business nature and appropriate for the court. This list deals with cases such as:

- disputes over contracts and business documents
- insurance and reinsurance
- sale of goods
- import, export and transport ('carriage') of goods
- professional negligence in commercial circumstances (eg solicitors and accountants)
- issues relating to arbitration awards
- restraint of trade
- banking and financial services
- agency and management agreements
- share sale agreements
- confidential information
- injunctions

#### **(4) Competition List (ChD)**

This list deals with claims brought under Article 101 and Article 102 of the Treaty on the Functioning of the European Union (“TFEU”), and also claims brought under the corresponding provisions of UK domestic law contained in Chapters I and II of Part 1 of the Competition Act 1998.

Article 101 (EU law claims) and Chapter I of Part 1 of the Competition Act 1998 (UK domestic law claims) prohibit agreements, concerted practices, or decisions by associations of undertakings whose object or effect is to prevent, restrict or distort competition.

Article 102 (EU law claims) and Chapter II of Part 1 of the Competition Act 1998 (UK domestic law claims) are aimed at preventing abusive behaviour by undertakings who hold a dominant position in a relevant geographic and product market (eg by imposing unfair prices or unfair trading arrangements).

A claim may be for an injunction to restrain an alleged breach or threatened breach of the competition rules, and/or for damages resulting from such a breach. Proceedings frequently involve consideration of economic or technical issues on which expert evidence is called. The procedure is governed by the Practice Direction on Competition Law (See further Ch.29 (7) of the Chancery Guide).

*(Note: claims such as those identified above may also be brought in the Competition Appeal Tribunal, whose jurisdiction was expanded by the Consumer Rights Act 2015 to bring it largely into line with that of the High Court. However, by virtue of the 2015 Act the Competition Appeal Tribunal has the exclusive jurisdiction over certain proceedings for collective redress for infringement of the competition rules.)*

Although a claim under paragraph 1 of the Practice Direction on Competition Law may be issued in any of the district registries with which it has significant links (see paragraph 7 above), its case management and/or trial will be dependant on the availability of a suitable judge.

## **(5) Financial List (ChD/Commercial Court - QBD)**

The Financial List is a specialist cross-jurisdictional list set up to address the particular business needs of parties litigating on financial matters. Disputes that are eligible for inclusion are those that principally relate to financial disputes of over £50m or equivalent, and which require particular market expertise or raise issues of general market importance. The list can deal with cases:

- generally worth more than £50 million
- which need expert judicial knowledge of financial markets
- which raise important issues for the sector

## **(6) Insolvency and Companies List (ChD)**

This list deals with both personal and corporate insolvency on the one hand, and companies work on the other hand.

Specifically, the work includes:

### *Insolvency*

- applications concerning company voluntary arrangements;
- administration applications and applications concerning administrations;
- petitions to wind up companies and partnerships;
- applications concerning the winding up of companies and partnerships (whether in members or creditors voluntary liquidation or following winding up by the court);
- applications concerning individual voluntary arrangements;
- bankruptcy petitions and applications concerning bankruptcy;
- applications relating to transaction avoidance in both personal and corporate insolvency;
- applications under the Cross-Border Insolvency Regulations
- petitions and applications under the Insolvency Act 2016 or the Administration of Insolvent Estates of Deceased Persons Order 1986.

### *Directors' disqualification*

- claims for the disqualification of unfit directors;
- applications for permission to act as a director after disqualification.



### *Company law*

- unfair prejudice petitions/shareholder disputes;
- applications for the confirmation of a reduction of capital;
- applications concerning schemes of arrangement
- other claims and applications under the Companies Act 2006, FISMA 2000, or the Companies (Cross-Border Mergers) Regulations 2007

This list of examples is not exhaustive.

### **(7) Intellectual Property List (ChD)**

The following matters must be dealt with in either the Patents Court or the IPEC (multi-track):

- (1) claims under the Patents Act 1977
  - (2) claims under the Registered Designs Act 1949
  - (3) claims under the Defence Contracts Act 1958
  - (4) claims relating to Community registered designs, semiconductor topography rights or plant varieties
- (collectively “registered rights claims”)

Claims under the Trade Marks Act 1994 and the other intellectual property claims set out at paragraph 16.1 of Practice Direction 63 (collectively “general intellectual property claims”) must be dealt with in either the Intellectual Property List generally or the IPEC.

There is no lower limit on the value of claims that may be commenced in the Intellectual Property List. Where, however, the damages or sums payable on an account of profits are likely to be £500,000 or less, consideration should be given to issuing the claim in the IPEC.

### *Intellectual property claims outside London*

Intellectual property claims may be issued in B&PCs District Registries. However the case management and/or trial of a claim in the Patents Court or the IPEC in the B&PCs District Registry in question will be dependent on an appropriate judge being made available in the district registry in question.

## **(8) Property, Trusts and Probate List (ChD)**

This list covers a large amount of Chancery work which is separate from the Business List. The examples given below are not intended to be a definitive list. The Property list deals mainly with land, and the Trusts list with matters that fall within Part 64 of the CPR, i.e. the administration of estates and the execution of trusts, and with charities. The Probate list covers all matters which fall within Part 57 of the CPR.

### **Property**

Landlord & Tenant residential

Landlord & Tenant commercial

Trespass/squatters

Mortgages

Land Registry

Land – title, easements, restrictive covenants etc

Orders for sale to enforce charging orders

Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)

### **Trusts**

Variation of trusts

Removal of trustees

Claims against trustees for breach of trust

Issues of construction/rectification

Trustees/Personal Representatives seeking directions including Beddoe applications

Disputes about trust property

Applications for prospective costs order

Charities

Applications for administration order

### **Probate**

Contentious Probate claims

Rectification of wills

Substitution or removal of Personal Representatives

Inheritance Act

Presumption of Death Act

## **(9) Revenue List (ChD)**

Claims involving major points of principle relating to taxation where HMRC is a party. (This List does not include claims for the recovery of taxes or duties or where a taxpayer disputes liability to pay tax. Such claims fall within the Business list).

## **(10) Technology & Construction Court (QBD)**

This list can be divided into three areas of work as follows:

(a) **Adjudication disputes.**

These are claims to enforce or challenges to adjudicators' decisions arising out of the Housing Grants' Construction and Regeneration Act 1996 (as amended).

(b) **Public procurement.**

This concerns all kinds of public procurement (not limited to construction or engineering projects) and involves, amongst other things, applications to lift the automatic suspension, and challenges to tender evaluations and decisions to award contracts.

(c) **The General TCC list.**

This includes:

- Building and engineering disputes.
- Claims by and against architects, engineers, surveyors, accountants and other specialised advisors relating to the services they provide.
- Claims involving issues that are technically complex.
- Claims relating to the design, supply and installation of computers, software and related network systems.
- Claims relating to the supply and provision of materials, goods, plant and other services.
- Claims by and against local authorities relating to their statutory duties concerning the development of land or the construction of buildings.
- Dilapidation claims as between landlord and tenant.
- Environmental claims, including pollution and reclamation.
- Nuisance claims relating to land use.
- Claims arising out of fires, explosions and other catastrophic events.
- Insurance disputes relating to construction, engineering and technology.

- Contractual disputes involving oil and gas installations, onshore and offshore, and ship building.
- Any arbitration claim under the Arbitration Act 1996, including challenges to decisions of arbitrators in construction and engineering disputes and/or application for permission to appeal and appeals in such cases.

## **Titles of Claims**

15. All claims issued in the Business and Property Courts must be titled as in the following examples:

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
PROPERTY TRUSTS AND PROBATE LIST (ChD)**

or

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS IN MANCHESTER  
BUSINESS LIST (ChD)**

or

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS IN WALES  
TECHNOLOGY AND CONSTRUCTION COURT (QBD)**

16. For claims which belong in one of the sub-lists, it is not necessary to include the overarching list/court in the title (although parties can do so if they would prefer to do so). The sub-list title suffices, as follows:

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
LONDON CIRCUIT COMMERCIAL COURT (QBD)**

or

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM  
PATENTS COURT (ChD)**

or

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**

## **COMPANIES COURT (ChD)**

17. When lodging an appeal to the Technology and Construction Court or the Patents Court, the case should be marked accordingly. For all other appeals to the Business and Property Courts, the title should be as follows:

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
APPEALS (ChD)**

or

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS IN BRISTOL  
APPEALS (ChD)**

18. When issuing proceedings, the general rule, which has not changed, is that below the title of the court in which the claim is issued, the title of the claim should contain only the names of the parties to the proceedings. There are however various exceptions. Examples include:

- (i) Proceedings relating to arbitrations
- (ii) Proceedings relating to the administration of an estate should be entitled "In the estate of AB deceased"
- (iii) Contentious probate proceedings should be entitled "In the estate of AB deceased (probate)"
- (iv) Proceedings under the Inheritance (Provision for Family and Dependents) Act 1975 should be entitled "In the Matter of the Inheritance (Provision for Family and Dependents) Act 1975"
- (v) Proceedings relating to pension schemes should be entitled "In the Matter of the [ ] Pension Scheme"
- (vi) Proceedings in the Companies Court should be entitled "in the matter of [the relevant company or other person] and of [the relevant legislation]"
- (vii) A claim form to which Section I of Part 63 applies (patents and registered designs) must be marked "Patents Court" below the title of the court in which it is issued (PD 63 paragraph 3.1(a))
- (viii) a claim form to which Section II of Part 63 applies (e.g. copyright, registered trade marks, Community trade marks and other intellectual

property rights) must, except for claims started in the Intellectual Property Enterprise Court (IPEC), be marked "Intellectual Property" below the title of the court in which it is issued (PD 63 paragraph 17). Claims relating to trade marks and Community trade marks must state the registration number of the trade mark

- (ix) proceedings under the Presumption of Death Act 2013 should be entitled "In the matter of an application for a declaration of the presumed death of [name]."

19. The new headings indicated above should be used throughout the Business & Property Courts for new cases issued after 2<sup>nd</sup> October 2017. The headings of orders made subsequently to 2<sup>nd</sup> October 2017 may (but are not required to) refer to the Business and Property Courts and the list or court in which the case would be were it to have been issued on or after 2<sup>nd</sup> October 2017, or they may continue to refer to the jurisdiction in which they were originally issued. A date will shortly be identified after which the headings of orders will be required to be in the new Business and Property Courts form.

20. The daily cause list published in the Business and Property Courts will list all the courts and lists in alphabetical order, indicating for each court/list which judge is sitting (in order of seniority), at what time, and in which court room. Those Business and Property Courts centres that operate fewer courts and lists than the Business and Property Courts of England & Wales may list all Business and Property Courts cases in a single daily list, or divide the cases by court/list, as preferred.

21. Existing claims, issued before 2<sup>nd</sup> October 2017, will retain their claim numbers. These will not change at any stage.

22. All claims issued in London on or after 2<sup>nd</sup> October 2017 are given a claim number with a prefix that reflects the Court, List or sub-list in which they are issued, in accordance with the table below, which can be found on CE-File.

| <b>List</b>      | <b>Sub-List</b>                   | <b>Pre-Fix</b> |
|------------------|-----------------------------------|----------------|
| Admiralty Court  | Admiralty Court                   | AD             |
| Appeals (ChD)*   | Appeals (ChD)                     | CH             |
| Business List    | Business                          | BL             |
|                  | Financial Services and Regulatory | FS             |
|                  | Pensions                          | PE             |
| Commercial Court | Commercial Court                  | CL             |

|                                   |   |    |
|-----------------------------------|---|----|
|                                   | London Circuit Commercial Court                   | LM |
|                                   | Circuit Commercial Court (other than London)*     | CC |
| Competition List                  | Competition List                                  | CP |
| Financial List                    | Financial List                                    | FL |
| Insolvency & Companies List       | Insolvency List                                   | BR |
|                                   | Companies Court                                   | CR |
| Intellectual Property List        | Intellectual Property                             | IL |
|                                   | Intellectual Property and Enterprise Court (IPEC) | IP |
|                                   | Patents Court                                     | HP |
| Property Trusts and Probate List  | Property Trusts and Probate                       | PT |
| Revenue List                      | Revenue List                                      | RL |
| Technology and Construction Court | Technology and Construction Court                 | HT |

\*NB: “Appeals (ChD)” is not a list in itself (and indeed does not exist in any centre other than London), but rather an option that can be selected on CE-File to lodge an appeal from Chancery-type cases decided in the County Court. TCC County Court cases will continue at present to be appealed through QBD appeals, although this may change when the centres outside London option an electronic filing system.

\*NB: outside London the “Commercial Court” list option will be replaced by the Circuit Commercial Court and no sub list will exist. The Circuit Commercial Court replaces the Mercantile Court, and in London it will be called the London Circuit Commercial Court. On the CE-File system the London Circuit Commercial Court appears as a sub-list of the Commercial Court (although strictly speaking it is not). The prefix for the Circuit Commercial Court other than the London Circuit Commercial Court will in due course be CC.

23. At present, case numbers in the centres outside London are not changing, and will only change once CE-File is introduced in those centres.

### **Claim Form marking**

24. All claim forms and all subsequent court documents relating to business or property work issued in the High Court must be marked “Business and Property Courts”; and all such claims issued in the County Court must marked “Business and Property Courts Work” by court staff, for proper triage.

25. In addition:

- Claims in the Shorter Trials Scheme must be marked in the top right hand corner “Shorter Trials Scheme”.
- Where the claim is a probate claim, the claim form and all subsequent court documents must be marked at the top “In the estate of [*name*] deceased (Probate)”.
- A claim form to which Section I of Part 63 applies (patents and registered designs) must be marked “Patents Court” below the title of the court in which it is issued.

### **Transfer of Proceedings**

26. Cases that have specific links with a locality must be capable of being tried in that locality by a specialist judge. Therefore, although the transfer criteria in CPR rule 30.2 (transfer between the County Court and the High Court) and 30.5 (transfer between High Court Divisions and to or from a specialist list) continue to apply, new transfer rules set out in the Practice Direction will also apply alongside the existing criteria for a transfer order in CPR rule 30.3.

27. When considering whether to make an order for transfer between the Royal Courts of Justice and the District Registries when the proceedings are in the Business and Property Courts, the court must, in addition to the criteria in CPR rule 30.3, also have regard to:

(a) significant links between the claim and the circuit in question, considering the factors listed in paragraph 11 above;

(b) whether court resources, deployment constraints, or fairness require that the hearings (including the trial) be held in some other court than the court it was issued into;

(c) the wishes of the parties, which bear special weight in the decision but may not be determinative;

(d) the international nature of the case, with the understanding that international cases may be more suitable for trial in centres with international transport links;

(e) the availability of a judge specialising in the type of claim in question to sit in the court to which the claim is being transferred.



28. An application for a transfer from the Rolls Building to or from a B&PCs District Registry or from a B&PCs District Registry to another such District Registry or to the Rolls Building must be made to the court from which transfer is sought and must additionally be discussed with and consented to by the receiving court. It will be sensible practice for the parties to discuss transfer with the appropriate judge at the receiving court before they apply for an order for transfer. If the parties are uncertain about the availability of a specialist judge, they should discuss this with the Listing Manager at the receiving court.

29. In addition to the provisions set out in CPR 30.3, the Business and Property Courts considering whether to make an order for transfer from the Business and Property Courts to a county court hearing centre must have regard to:

(a) to the nature of the claim, in accordance with guidance as to what business falls within the specialist work of the B&PCs, provided at paragraphs 4.2 to 4.5 of the Practice Direction; and,

(b) to the availability of a judge specialising in the corresponding type of claim to sit in an appropriate court in the circuit.

30. The following guidelines, which relate to transfers to a District Registry outside London, the County Court, or another Division of the High Court, are still relevant and should also be followed.

- Only cases which may properly be regarded as being suitable for management and trial in London will be retained there. All other claims will be transferred out. Active consideration will be given at all stages of the management of a claim to the appropriate venue for the claim to be managed and tried. If a case is suitable for transfer, it is generally preferable for it to be transferred before detailed case management has taken place, leaving the receiving court to case manage the claim in accordance with its usual approach.
- Consideration will be given, where relevant, to:
  - PD 29 paragraphs 2.1 to 2.6 which provide guidance for case management within the High Court in London;
  - Part 49 and PD 49A and PD 49B – Specialist Proceedings;
  - Part 57 – Probate and Inheritance;

- Part 63 – Intellectual Property.
- Under PD 29 paragraph 2.2 a claim with a value of less than £100,000 will generally be transferred to the County Court unless it is required by an enactment to be tried in the High Court, it falls within a specialist list, or it falls within one of the categories specified in the list at PD 29 paragraph 2.6.
- The figure of £100,000 in PD 29 paragraph 2.2 accords with the current minimum value of money claims which may be issued in the High Court. It does not follow that money claims of over £100,000 (or over £200,000 (the value figure beyond which court fees do not increase)) will be retained. The value of a claim is not a consideration which has greater weight than the other criteria set out in CPR rule 30.3(2) but it is likely to be a factor with considerable influence in making a decision about transfer to the County Court or a specialist list. Similarly, for probate and equity claims, the figures of £30,000 and £350,000 respectively are not determinative.
- If the value of the claim is ascertainable, the court will consider the possibility of transferring Part 7 claims with a value of less than £500,000. Factors which may point to retention of such claims in the High Court include complex facts and/or complex or non-routine legal issues or complex relief; parties based outside the jurisdiction; public interest or importance; large numbers of parties; any related claim; and the saving of costs and efficiency in the use of judicial resources.
- The availability of a judge with the specialist skills to deal with the claim is always an important consideration when considering whether or not to transfer it. There are for example two circuit judges at Central London County Court who are specialised in Chancery work, and the waiting times at Central London are likely to be shorter than in the High Court for a trial before a judge. The delay in having a case heard should also be a consideration when deciding whether to transfer a case to the County Court or not and regard will be had to listing information provided by the Central London CC Business and Property Court team. The order for transfer of a claim to Central London County Court, may include a direction that the case is considered to be suitable for trial only by a specialist circuit judge. Such a direction is not binding on the County Court but should be taken into account.
- PD 29 paragraphs 2.6(1), (3) and (7) indicates that professional negligence claims, fraud and undue influence claims and contentious probate claims are suitable for trial in the High Court, but it does not follow that claims within these categories should

necessarily remain in the High Court. Less complex and/or lower value claims of these types are suitable for trial in Central London County Court, as Business and Property Court Work. Serious cases of fraud, however, should generally remain in the High Court. Certain professional negligence claims may be better suited to the Queen's Bench Division.

- Part 7 and Part 8 claims may sometimes be dealt with more efficiently by a Master rather than transferring the claim, especially since the amendments to PD 2B which came into effect on 6 April 2015.
- Many claims under the Inheritance Act will be suitable for trial in the County Court and should generally be transferred to Central London County Court, Business and Property Court List unless the Master is willing to try the claim and it is efficient to do so. Inheritance Act claims by a spouse will usually be suitable for transfer to the Family Division. Where there is a related Probate claim, or other Part 7 claim, the overall scope of the issues before the Court should be considered and generally all related claims should either be retained in the High Court or transferred out. The County Court limit for probate claims is £30,000, but claims well above that figure should be transferred to the County Court nonetheless.
- Most claims relating to joint ownership under the Trusts of Land and Appointment of Trustees Act 1996 will be suitable for transfer to the County Court.

31. An application to transfer a case into the shorter trials scheme may be made to a Judge or, in the relevant list, to a Master.

Sir Geoffrey Vos

Chancellor of the High Court

13<sup>th</sup> October 2017

# DRAFT

## ANNEX 1

### **“PRACTICE DIRECTION – BUSINESS AND PROPERTY COURTS**

#### **Contents of this Practice Direction**

| <b>Title</b>  | <b>Number</b> |
|---|---------------|
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#### **Scope**

- 1.1** The Chancery Division of the High Court, the Commercial Court, the Technology and Construction Court, the Circuit Commercial Court, and the Admiralty Court located in the Royal Courts of Justice, Rolls Building together with the Chancery Division of the High Court, the Technology and Construction Court and the Circuit Commercial Courts in the District Registries of the High Court in Birmingham, Bristol, Leeds, Manchester and Cardiff together constitute the Business and Property Courts.
- 1.2** The Business and Property Courts located at the Royal Courts of Justice, Rolls Building, are collectively described as the Business and Property Courts of England and Wales. Those Business and Property Courts in the District Registries of the High Court in Birmingham, Bristol, Leeds, Manchester, and Cardiff, are, respectively, described as the Business and Property Courts in Birmingham, the Business and Property Courts in Bristol, the Business and Property Courts in Leeds, the Business and Property Courts in Manchester, and the Business and Property Courts in Wales. In this Practice Direction the Business and Property Courts in Birmingham, Bristol, Leeds, Manchester and Cardiff are referred to together as the BPCs District Registries.
- 1.3** The work of the Business and Property Courts is divided and listed into the following courts or lists: the Admiralty Court, the Business List, the Commercial Court, the Circuit Commercial Courts, the Competition List, the Financial List, the

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Insolvency and Companies List, the Intellectual Property List, the Property, Trusts and Probate List, the Revenue List, and the Technology and Construction Court.

**1.4** The courts or lists of the Business and Property Courts include sub-lists, as follows:

- (1) The Pensions sub-list and Financial Services and Regulatory sub-list are sub-lists of the Business List;
- (2) The Patents Court and the Intellectual Property Enterprise Court are sub-lists of the Intellectual Property List.

**1.5** (1) The Business and Property Courts operate within and are subject to all statutory provisions and rules together with all procedural rules and practice directions applicable to the proceedings concerned.

(2) In particular, the following provisions of the CPR apply—

Part 49 (Companies Court)

Part 57 (Probate, Inheritance and Presumption of Death)

Part 58 (Commercial Court)

Part 59 (Circuit Commercial Courts)

Part 60 (Technology and Construction Court Claims)

Part 61 (Admiralty Claims)

Part 62 (Arbitration Claims)

Part 63 (Intellectual Property Claims)

Part 63A (Financial List)

Part 64 (Estates, Trusts and Charities)

Practice Direction – Insolvency Proceedings

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Practice Direction: Directors Disqualification Proceedings

Practice Direction PD51O (Electronic Working)

EU Competition Law Practice Direction

**1.6** This Practice Direction applies to cases in the Business and Property Courts or cases which are to be issued in those courts. In the event of inconsistency between this Practice Direction and any other Practice Direction the provisions of this Practice Direction shall prevail.

**1.7** Parties will also need to give careful consideration to the Chancery Guide, the Admiralty and Commercial Courts Guide, the Technology and Construction Court Guide, the Financial List Guide, the Circuit Commercial Court Guide, the Patents Court Guide, and the Intellectual Property Enterprise Court Guide (where applicable).

## **Starting proceedings**

**2.1** Starting proceedings in the Business and Property Courts is subject to CPR Parts 7 and 8.

### **2.2**

(1) A claimant wishing to issue a claim in the Business and Property Courts chooses which court, list or sub-list from within the Business and Property Courts in which to issue its claim, based (subject to sub-paragraph (2)) on the principal subject matter of the dispute.

(The courts, lists and sub-lists are set out in paragraphs 1.3 and 1.4.)

(2) In cases where different aspects of the dispute indicate that the case be issued in different lists, sub-lists or courts, the claimant must consider whether there are aspects requiring the expertise of a specialist judge and choose the list, sub-list or court in which the relevant specialist judges sit.

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- (1) Before a claimant issues a claim in the Business and Property Courts, the claimant must determine the appropriate location in which to issue the claim.
- (2) With the exception of claims started under Parts 58, 60, 61 and 62, claims which are intended to be issued in the Business and Property Courts and which have significant links to a particular circuit outside the South Eastern Circuit must be issued in the BPCs District Registry located in the circuit in question. If a claim has significant links with more than one circuit, the claim should be issued in the location with which the claim has the most significant links.
- (3) A link to a particular circuit is established where—
  - (a) one or more of the parties has its address or registered office in the circuit in question (with extra weight given to the address of any non-represented parties);
  - (b) at least one of the witnesses expected to give oral evidence at trial or other hearing is located in the circuit;
  - (c) the dispute occurred in a location within the circuit;
  - (d) the dispute concerns land, goods or other assets located in the circuit; or
  - (e) the parties' legal representatives are based in the circuit.

## **2.4**

- (1) In a claim issued in London in the following courts, a hearing may, where appropriate, take place in a court in a circuit—
  - (a) the Commercial Court;
  - (b) the Admiralty Court;
  - (c) the Financial List;
  - (c) the Technology and Construction Court.
- (2) A judge of the Commercial Court may, where appropriate and subject always to available judicial resources, be made available to hear a claim issued in a Circuit Commercial Court.

**2.5** While any appropriate claim may be issued in any of the BPCs District Registries, the following are circumstances in which case management or trial may instead occur in the Business and Property Courts of England and Wales—

- (1) Where a claim is issued in the Revenue List in one of the BPCs District Registries, Her Majesty's Revenue and Customs may nevertheless seek to have the proceedings case managed and/or tried in the Business and Property Courts of

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England and Wales, in accordance with CPR 30.3(2)(h) and Annex 1 of Practice Direction 66.

(2) A claim meeting the definition established in paragraph 1.1 of the EU Competition Law Practice Direction may be issued in an appropriate BPCs District Registry, but its case management and/or trial in the district registry in question will be dependent on an appropriate judge being made available in the district registry in question.

(3) A claim in the Intellectual Property List, which includes the Patents Court and the Intellectual Property Enterprise Court (“IPEC”) (and includes the IPEC small claims track to which rule 63.27 applies), may be issued in an appropriate BPCs District Registry. However the case management and/or trial of a claim in the Patents Court or the IPEC in the BPCs District Registry in question will be dependent on an appropriate judge being made available in the district registry in question.

## **Transfers**

**3.1** (1) Subject to CPR 30.2, 30.5 and 59.3, the Business and Property Courts may, having regard to the criteria in 3.1(3), order proceedings in the Business and Property Courts of England and Wales or of a BPCs District Registry, or any part of such proceedings (such as a counterclaim or an application made in the proceedings), to be transferred—

(a) from the Business and Property Courts of England and Wales to the Business and Property Courts in a BPCs District Registry; or

(b) from the Business and Property Courts in a BPCs District Registry to the Business and Property Courts of England and Wales or to the Business and Property Courts in another BPCs District Registry.

(2) An application for an order under paragraph 1(b) must be made to the Business and Property Court from which the transfer is sought, and notified to the intended receiving Business and Property Court at the same time by the applicant, and must be consented to by the receiving Business and Property Court before any order for transfer is made.



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(3) When considering whether to make an order under rule 30.2(4) (transfer between the Royal Courts of Justice and the district registries) when the proceedings are in the Business and Property Courts, the court must also have regard to—

(a) significant links between the claim and the circuit in question, considering the factors listed in paragraph 2.3(3) above;

(b) whether court resources, deployment constraints, or fairness require that the hearings (including the trial) be held in another court than the court into which it was issued;

(c) the wishes of the parties, which bear special weight in the decision but may not be determinative;

(d) the international nature of the case, with the understanding that international cases may be more suitable for trial in centres with international transport links;

(e) the availability of a judge specialising in the type of claim in question to sit in the court to which the claim is being transferred.

**3.2** In addition to the provisions set out in CPR 30.3, the Business and Property Courts must have regard, when considering whether to make an order for transfer from the Business and Property Courts to a county court hearing centre:

(a) to the nature of the claim, in accordance with the guidance provided at paragraphs 4.2 to 4.5; and,

(b) to the availability of a judge specialising in the corresponding type of claim to sit in an appropriate court in the circuit;

**3.3** When considering the availability of a judge under paragraph 3.1(e), the listing office of the court to which the claim is being transferred will be consulted before the order is made by the court.

## **Specialist work in the County Court**

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**4.1** Subject to any enactment or rule relating to the jurisdiction of the County Court, the County Court at Central London, Birmingham, Bristol, Cardiff, Manchester, Newcastle, Leeds, Liverpool, and Preston are appropriate venues for any cases which are suitable to be heard in the County Court which fall within the definition in paragraph 4.2 as the specialist work of the type undertaken in the Business and Property Courts.

**4.2** The specialist work of the type undertaken in the Business and Property Courts includes all the work that falls under the jurisdiction of the courts and lists that make up the Business and Property Courts, except for—

- (a) Claims for possession of domestic property and rent and mesne profits, or in respect of domestic mortgages;
- (b) Claims for possession of commercial premises or disputes arising out of business tenancies that are routine in nature;
- (c) Claims falling under the Trusts of Land and Appointment of Trustees Act 1996, unless combined with other specialist claims;
- (d) Hearings of unopposed creditors' winding-up or bankruptcy petitions or applications to set aside statutory demands;
- (e) Building claims, other than adjudication claims, of a value under £75,000;
- (f) Invoice and other straightforward business claims of a value under £75,000;
- (g) Boundary and easement disputes involving no conveyancing issues;
- (h) Claims to enforce a charging order;
- (i) Applications under the Access to Neighbouring Land Act 1992;
- (j) Proceedings under the Inheritance (Provision for Family and Dependents) Act 1975.

**4.3** Claims issued in the County Court which are issued in the County Court at the hearing centres defined in paragraph 4.1 and relate to the specialist work of the type undertaken in the Business and Property Courts will be marked "Business and Property work" by the court upon allocation if they have not already been marked in that way by the claimant, and will be managed and heard only by judges specialising in this work.

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**4.4** Judges specialising in the County Court Business and Property work must spend a minimum of 20 percent of their time handling Business and Property work, either in the Business and Property Courts or in the County Court.

## **Appeals in BPCs District Registries**

**5.1** Specific appeal slots will be created in listing in the BPCs District Registries to accommodate blocks of applications for permission to appeal and appeals which are to be heard by a Group A judge (as defined in PD52A) in accordance with that PD52A.

**5.2** So far as possible these slots will be concomitant with the slots identified for cases listed in BPCs District Registries requiring a Group A judge as defined in PD52A to hear them and transferred cases referred to in paragraph 3.”.