**Introduction to the Commercial Court**

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**Introduction**

Many of the claims heard by the County Courts and the Chancery and King’s Bench Divisions of the High Court could be categorised as ‘commercial’. The Commercial Court (the ‘CC’) is, however, a court dealing with particularly complex and specialised ‘commercial’ cases. The CC is a specialist court in the King’s Bench Division. The CC is also one of the courts under the umbrella of the Business and Property Courts. It sits in London.

The work of the CC is highly diverse; cases covered include (for example) contractual disputes related to shipping; the international carriage of goods; oil and gas; the purchase and sale of commodities; insurance and re-insurance; banking and financial services; and arbitration. Typically, these are high value and complex cases.

There are a number of permanent CC judges. The CC judges are all experts in the type of case dealt with by that court, having practised in that area before becoming judges.

A summary of the most relevant High Court specialist courts and lists is presented on the next page. You will see that the King’s Bench Division has its own specialist ‘Media & Communications’ list where media claims, including data protection matters, will be heard by judges with specialist knowledge in those areas.

**The High Court (KBD and Chancery)**

This slide presents a diagram highlighting the structure of the Business and Property Courts. The courts outlined in red, which form part of the Business and Property Courts, include:
- Commercial Court
- Admiralty Court
- Circuit Commercial Courts
- Technology & Construction Court
- Financial List
- Business List
These courts handle complex business and property-related disputes. The diagram visually groups these courts to show their relationship within the broader judicial system. The above mentioned courts are within the Business and Property Courts, while the “General” KBD List, the Media/Comms List, Administrative Court and Planning Court do not.

**Applicable rules**

The CPR apply to cases in the CC, just as they apply to other cases in other courts. There are, however, additional rules and provisions which apply exclusively to CC cases. These are contained within CPR 58 and 58 PD. These rules supplement and, in some instances disapply, the *general* CPR rules (CPR 58.3). The CPR are then supplemented by the Commercial Court Guide (incorporating the Admiralty Court Guide) (the ‘Guide’), which is available online and is regularly updated. These provisions are contained in Volume 2 of the White Book in Section 2, ‘Specialist Proceedings’.

Business disputes of lesser value and complexity than are appropriate for the CC may be dealt with by the High Court in the Circuit Commercial Court (which sits in London and various other locations nationally).

**Which type of claim?**

CPR 58.1(2) gives some guidance on the nature of a commercial claim, stating that it means any claim arising out of the transaction of trade and commerce and providing a non-exhaustive list of the types of claim falling within that.

However, clearly not all claims ‘arising out of the transaction of trade and commerce’ are suitable for the CC – the claims must be high value and complex such that use of the procedures and expertise of the CC are justified. Claims in the CC often have an international dimension.

We will now go on to consider some key procedural features of the CC.

**Service of proceedings**

Once proceedings are issued in the CC, service of the claim form will then be the claimant’s responsibility and will not be undertaken by the CC (58PD9, Guide B7.1).

In a CC claim, it is the claim form - rather than the particulars of claim - which must be accompanied by the response pack (namely, the three forms referred to in CPR 7.8(1)):

- a form for defending the claim;

- a form for admitting the claim; and

- a form for acknowledging service (CPR 58.5(1)(b)).

If particulars of claim are not contained in or served with the claim form, the claim form must state that, if an acknowledgment of service is filed which indicates an intention to defend the claim, the particulars of claim will follow (CPR 58.5(1)(a)). The particulars of claim must then be served within 28 days of the filing of the acknowledgment of service which indicates an intention to defend (CPR 58.5(1)(c)).

**Acknowledgment of service**

A defendant must file an acknowledgment of service – this is compulsory in every CC case. The acknowledgment of service must be filed by the defendant within 14 days of service of the claim form (whether or not the particulars of claim are to follow service of the claim form, are contained in the claim form or accompany the claim form) (CPR 58.6(1)-(2), Guide B9.1 and B9.4(a)). A longer period will apply if service of the claim form is effected outside the jurisdiction (CPR 58.6(3)).

If the defendant does not acknowledge service within the above period, the claimant may apply for default judgment (CPR 58.8(1), 58PD6, Guide B11).

If the defendant files an admission, the claimant may enter judgment on that admission. If the defendant admits part of a claim for a specified amount of money, the claimant may apply under CPR 14.3 for judgment on the admission (see also CPR 58.9, 58PD6 and Guide B12).

By requiring the defendant to acknowledge service of the claim form (as opposed to the particulars of claim), the costs of preparing particulars of claim can, in theory, be postponed until it is certain that the defendant is going to engage in the proceedings. However, complex cases will require work to start on the particulars of claim much earlier than this, and the claimant will often already know the defendant’s position.

**Defence and reply**

Where a defendant files an acknowledgment of service, the general rule is that the period for filing a defence is 28 days after service of the particulars of claim (CPR 15.4(1)(b), Guide C3.2(a)). This rule applies in the CC. The parties can extend this period by up to 28 days, again so long as they evidence their agreement in writing and notify it to the court (Guide C3.2(b)).

The claimant must file and serve any reply to a defence within 21 days after service of the defence (CPR 58.10(1), Guide C4.1).

**Statements of case summary diagram:** **C Issues claim form (Normal practice = claim form does not contain POC)>** C Serves claim form, together with response pack>D Acknowledges service/files admission, within 14 days of service of claim form>If D acknowledges service, indicating intention to defend…>C files and serves POC, within 28 days after service of acknowledgment of service>D files and serves defence within 28 days of service of POC>C files and serves reply within 21 days of service of defence>All proceedings will proceed as if allocated to multi-track

**Case management**

All proceedings in the CC are automatically allocated to the multi-track (CPR 58.13(1) and Guide D1.2). On this basis, CPR 26 does not apply to CC claims (CPR 58.13(1)). As a result the parties do not need to file a directions questionnaire but do need to file a case management information sheet which plays a similar role.

Only the following parts of CPR 29 will apply to CC cases:

- CPR 29.3(2) (legal representative with sufficient authority to deal with any issues that are likely to arise to attend the CMC and pre-trial review (’PTR’)). However, this is subject to CC Guide D7.1 which requires parties to consider in every case whether attendance by senior advocates is reasonably required or matters can be dealt with by the more or most junior advocates.

- CPR 29.5 (variation of case management timetable) (except CPR 29.5(1)(c));

- 29PD5 (CMC), with the exception of 5.9; and

- 29PD7 (failure to comply with case management directions).

Otherwise, the CC case management procedure (CPR 58.13, 58PD10, Guide C.6, D) takes the place of CPR 29.

**Interim applications**

In some cases, where it appears that a case will be particularly long or complex or may involve frequent interim applications, the case may be allocated to a designated judge. All applications in the case and the trial (other than applications for an interim payment) will be heard by the designated judge.

The CC distinguishes between “paper”, “ordinary” and “heavy” applications.

Paper applications (‘on the documents’) are covered by Section F4 of the Guide and are dealt with without a hearing (i.e. ‘on paper’). However, this will rarely be suitable for a contested application, which will usually require a full oral hearing (Guide F4.1(a)).

The Guide (Part F) details specific timelines for the service and filing of evidence in relation to interim applications and also how those applications should be presented.

**Disclosure and witness evidence**

As the CC is part of the Business and Property Courts:

In relation to disclosure, the provisions of 57AD PD (Disclosure in the Business and Property Courts) apply;In relation to witness statements, the provisions of 57AC PD (Trial Witness Statements in the Business and Property Courts) apply.

These are the subject of separate elements.

**Progress monitoring**

A **progress monitoring date** will be fixed at the CMC. It is usually after the date fixed for the exchange of witness statements and experts’ reports (Guide D11.1). The Guide provides (at D11.2) that, at least three clear days before the progress monitoring date, the parties must send to the court, and to each other party, a progress monitoring information sheet (‘PMIS’). This will tell the court:

- whether they have complied with the pre-trial timetable and, if not, which steps are outstanding; and

- whether they will be ready for a trial commencing on the fixed date within the pre-trial timetable or, if not, why not.

The PMIS is a hallmark of the particularly ‘active’ case management approach that the CC takes, justified by the complex nature and high value of CC claims.

**Summary**

- The Commercial Court handles high value, complex and often international commercial disputes.

- The applicable rules are the usual CPR, the Commercial Court provisions in CPR 58 and 58 PD, and the Commercial Court Guide.

- The procedure for filing and serving statements of case differs to the usual procedure.

- Claims are automatically treated as allocated to the multi-track but the case management procedure differs from other courts.

- The BPC rules for trial witness statements and disclosure apply.

- A progress monitoring date is set, usually after experts’ reports, for the parties to confirm compliance with directions (via a Progress Monitoring Information Sheet) and for the court to take any appropriate steps to ensure the claim is ready for trial.