



## The new Commercial Court Guide – key issues for clients

*Remote working arrangements and conventional innovations covering disclosure and trial witness statements have brought changes to the Commercial Court Guide, writes [Joehunt Jinnah](#), Associate at CJC.*

The latest edition of the Commercial Court Guide (incorporating the Admiralty Court Guide, hereinafter referred to as the “**Guide**”), 11<sup>th</sup> edition, was published earlier this year. Like previous updates, changes reflect developments in the way the Court now operates and will allow the Court to maintain speedy and efficient dispute resolution for commercial parties.

The Guide is very much a matter for the legal profession, but it is vital for clients to understand how the amendments will change the way lawyers handle Court cases to ensure full compliance. This article considers the Guide from a client point of view and highlights five key changes that clients should know about.

### (1) Disclosure

The disclosure pilot scheme is not new. It was introduced on 1 January 2019 in the Business & Property Courts in London, Bristol, Liverpool and in other counties, and has been continually updated since. To summarise, the scheme aims to reduce disclosable documents in certain cases to those that are essential and to help reduce the significant costs and work associated with standard disclosure.

One of the ways the scheme attempts to achieve this is by allowing the Courts to be more proactive in directing specific disclosure models – Model A being the most limited and Model E being the widest disclosure model, the latter only in exceptional cases. The Guide now incorporates the pilot scheme and applies it to most proceedings in the Commercial Court. Even high value cases in the Commercial Court can now be classified as ‘less complex claims’ for the purpose of disclosure. The Guide advocates, where appropriate, a simpler disclosure process and more cooperation between the parties. The anticipated effect for the client is that costs should be lower as compared to the conventional standard disclosure method, depending on the models the Court orders. Another important point is that cooperation between lawyer and client is now key to identifying relevant issues and documents from the beginning. The disclosure pilot does not apply in the Admiralty Court, unless ordered to apply in the particular case.

### (2) Review of the evidence

The Guide introduces a new section titled, ‘Ongoing review of evidence’. This is very much a complement to the disclosure process but is also designed to operate throughout all stages of the proceedings.

The Guide now expressly provides that all parties will have to give careful consideration as to how they will prove their factual case at trial or refute the case of another party. This may require ongoing consultation and advice with retained Counsel. This consideration will then inform the parties’ approach when seeking and providing disclosure.



Some of the express considerations in the Guide are (a) the proportion of the disclosed material to be utilised at trial and (b) whether preceding directions provided for expert evidence remain appropriate. The Guide accordingly states, *“Where costs management applies... adequate allowance should be included in the parties’ costs budgets for the costs of any advice they are likely to require on these matters following disclosure.”*

It is not entirely clear whether this new obligation will have the effect of increasing costs due to additional consultation with Counsel and the client. However, it is possible that this obligation will increase the likelihood of settlement before a full-blown trial which would ultimately save the client costs. Focusing on the salient issues may also lead to an overall reduction in costs when the entirety of the proceedings is considered. In any case, cooperation is again a key theme in this change.

### **(3) Junior advocates**

Another change to the Guide is the encouragement given by the Court to allow more involvement by junior Counsel. For instance, the guide states that where parties have retained more than one advocate, it is the experience of the Court that junior advocates within a team are well suited, and perhaps more appropriate, to attend and provide the oral advocacy required (i.e., in case management conferences or in costs hearings). This is not a hard and fast rule mandating that only junior advocates can or must attend to such matters. It is still very much the client’s prerogative. Nevertheless, the express focus on the use of junior advocates represents a significant benefit to clients in terms of costs.

### **(4) Out-of-hours applications**

Members of the judiciary have expressed their concern that the question of urgency in out-of-hours applications was not always being considered carefully, putting the judicial system under unnecessary strain. Accordingly, the Court is increasing its scrutiny of such applications, and the Guide states that lawyers who disregard the purpose of the out-of-hours mechanism, which is only to be used in exceptional circumstances, will be subject to penalties. Legal representatives of the applicant must now certify why the application is urgent. It is not clear what the effect of this development will be. However, to manage expectations, clients should note that their representatives may not readily accede to any urgent request for making an application immediately without careful consideration of the circumstances due to the risk of penalties. Of course, applications which objectively are urgent will be processed in the usual way.

### **(5) Move to digital**

The Covid-19 pandemic has transformed the way a lot of the Court work is done. There is now a greater focus on a paperless approach in the Court. In addition to parties making wider use of IT throughout the proceedings, the Guide now expressly provides that only electronic bundles, unless otherwise requested by the Judge, should be filed with the Court. Whilst this saves the cost of printing hard copy bundles, solicitors will still need to ensure that the electronic bundles adhere to the Guide and its specific requirements for e-bundles. The Court therefore emphasises the need for quality in bundle preparation. To save costs, clients should ensure they provide their lawyers with clear copies of documents from the start for their future inclusion in the bundles.

### **CJC Perspective**

The new changes in the Guide are welcomed by the Court users but do introduce modifications which change the way cases are managed in the Commercial Court. Greater use of IT is welcomed and beneficial in the long-term. There are also conventional changes, such as to the disclosure process and the taking down of witness statements, which we anticipate will have a positive effect on costs and lowering the document load on the Court. It is further hoped that this will lead to providing speedy and efficient dispute resolution to Court users.

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