

PRACTICE DIRECTION: DIRECTORS DISQUALIFICATION PROCEEDINGS

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PART ONE: GENERAL

1. Application and interpretation

1.1

In this Practice Direction:

(1) ‘the Act’ means the Company Directors Disqualification Act 1986 (as amended);

(2) ‘the Disqualification Rules’ means the rules for the time being in force made under section 411 of the Insolvency Act 1986 in relation to disqualification proceedings¹

(3) ‘the Insolvency Rules’ means the rules for the time being in force made under sections 411 and 412 of the Insolvency Act 1986 in relation to insolvency proceedings;

(4) ‘CPR’ means the Civil Procedure Rules 1998 and ‘CPR’ followed by ‘Part’ or ‘Rule’ and a number means the part or Rule with that number in those Rules;

(5) ‘disqualification proceedings’ has the meaning set out in paragraph 1.3 below;

¹ The current rules are the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987, as amended (“the 1987 Rules”). For convenience, relevant references to the 1987 Rules, which apply to disqualification applications under sections 7, 8 and 9A of the Act (see rule 1(3)), are set out in footnotes to this Practice Direction. This Practice Direction applies certain provisions contained in the 1987 Rules to disqualification proceedings other than applications under sections 7, 8 and 9A of the Act.

(6) a ‘disqualification application’ is an application under the Act for the making of a disqualification order;

(7) References to a ‘Registrar’ are to a Registrar in Bankruptcy of the High Court and (save in cases where it is clear from the context that a particular provision applies only to the High Court in London) include a District Judge in a District Registry of the High Court and in County Court having insolvency jurisdiction;

(8) except where the context otherwise requires references to:

(a) ‘company’ or ‘companies’ shall include references to ‘partnership’ or ‘partnerships’ and to ‘limited liability partnership’ and ‘limited liability partnerships’;

(b) ‘director’ shall include references to an ‘officer’ of a partnership and to a ‘member’ of a limited liability partnership;

(c) ‘shadow director’ shall include references to a ‘shadow member’ of a limited liability partnership;

and, in appropriate cases, the forms annexed to this practice direction shall be varied accordingly.

(9) Where the Act applies to other entities as it applies to companies, references in this practice direction to director or officer of a company and to other terms in the Act as provided for by legislation shall also apply for the purposes of this practice direction.

1.2

This practice direction shall come into effect on 9 December 2014, and shall replace the practice direction which came into effect on 26 April 1999 (as subsequently amended). Steps taken prior to 9 December 2014, and steps taken on or after that date in accordance with an obligation which arose before that date or a court direction made before that date, shall not thereby be invalidated.

1.3

This practice direction applies to all proceedings brought under the Act and/or the Disqualification Rules (“disqualification proceedings”)².

2. Multi-track

2.1

All disqualification proceedings are allocated to the multi-track. The CPR relating to direction questionnaires and track allocation shall not apply.

² This includes any applications under the Act to the extent provided for by subordinate legislation.

3. Rights of audience

3.1

Official receivers and deputy official receivers have right of audience in any proceedings to which this Practice Direction applies, including cases where a disqualification application is made by the Secretary of State or by the official receiver at his direction.³

PART TWO: DISQUALIFICATION APPLICATIONS

4. Commencement

4.1

A disqualification application must be commenced by a claim form in the form annexed hereto.

4.2

The procedure set out in CPR Part 8⁴, as modified by this practice direction and (where the application is made under sections 7, 8 or 9A of the Act) the Disqualification Rules shall apply to all disqualification applications. CPR rule 8.2 (contents of the claim form) shall not apply. CPR rule 8.1(3) (power of the Court to order the application to continue as if the claimant had not used the Part 8 Procedure) shall not apply.

4.3

When the claim form is issued, the claimant will be given a date for the first hearing of the disqualification application. This date is to be not less than eight weeks from the date of issue of the claim form⁵. The first hearing will be before a registrar.

5. Headings

5.1

Every court document in disqualification applications shall be headed:

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

³ Rule 10 of the 1987 Rules.

⁴ Rule 2(2) of the 1987 Rules.

⁵ Rule 7(1) of the 1987 Rules.

[DISTRICT REGISTRY] or [COMPANIES COURT] if in the Royal Courts of Justice

or

IN THE COUNTY COURT SITTING AT []

followed by

IN THE MATTER OF [name of company]
AND IN THE MATTER OF THE COMPANY DIRECTORS
DISQUALIFICATION ACT 1986.

6. Service of the claim form

6.1

Service of claim forms in disqualification applications will be the responsibility of the Claimant and will not be undertaken by the court.

6.2

If serving by first class post on the defendant's last known address, the day of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the claim form was posted⁶. Otherwise, Sections I and II of CPR Part 6 apply. Attention is drawn to CPR 16.17 regarding a certificate of service of the claim form.

6.3

The claim form served on the defendant shall be accompanied by an acknowledgment of service.

6.4

Section IV of CPR Part 6 shall not apply. In any disqualification proceedings where a claim form or order of the court or other document is required to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit⁷, may require such proof of service as it thinks fit, and may give such directions as to acknowledgment of service as it thinks fit.

⁶ Rule 5(1) of the 1987 Rules.

⁷ Rule 5(2) of the 1987 Rules.

7. Acknowledgment of service

7.1

The form of acknowledgment of service annexed to this Practice Direction shall be used in disqualification proceedings. CPR rule 8.3(2) and 8.3(3)(a) shall not apply.

7.2

The defendant shall:

(1) (subject to any directions to the contrary given under paragraph 6.4 above) file an acknowledgment of service in the prescribed form not more than 14 days after service of the claim form; and

(2) serve a copy of the acknowledgment of service on the claimant and any other party.

7.3

Where the defendant has failed to file an acknowledgment of service and the time period for doing so has expired, the defendant may attend the hearing of the application but (unless the court orders otherwise) may not take part in the hearing unless the court gives permission and the defendant undertakes to file and serve an acknowledgment of service.

8. Evidence

8.1

Evidence in disqualification applications shall be by affidavit, except where the official receiver is a party, in which case his evidence may be in the form of a written report (with or without affidavits by other persons) which shall be treated as if it had been verified by affidavit by him and shall be prima facie evidence of any matter contained in it.⁸

8.2

The affidavits or the official receiver's report in support of the application shall include a statement of the matters by reference to which it is alleged that a disqualification order should be made against the defendant.⁹

8.3

When the claim form is issued:

⁸ Rule 3(2) of the 1987 Rules. Section 441 of the Companies Act 1985 makes provision for the admissibility in legal proceedings of a certified copy of a report of inspectors appointed under Part XIV of the Companies Act 1985.

⁹ Rule 3(3) of the 1987 Rules..

(1) the affidavit or report in support of the disqualification application must be filed in court; and

(2) except where the court requires otherwise, exhibits must be lodged with the court where they shall be retained until the conclusion of the proceedings; and

(3) copies of the affidavit/report and exhibits shall be served with the claim form on the defendant.¹⁰

(4) If, as a result of the court's requirement, exhibits are not lodged in accordance with 8.3(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

8.4

The defendant shall, within 28 days from the date of service of the claim form¹¹:

(1) file in court any affidavit evidence in opposition to the disqualification application that he or she wishes the court to take into consideration; and

(2) except where the court requires otherwise, lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and

(3) at the same time, serve upon the claimant a copy of the affidavits and exhibits.

If, as a result of the court's requirement, exhibits are not lodged in accordance with 8.4(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

8.5

In cases where there is more than one defendant, each defendant is required to serve his evidence on the other defendants at the same time as service on the claimant unless the court otherwise orders.

8.6

The claimant shall, within 14 days from receiving the copy of the defendant's evidence¹²:

(1) file in court any further affidavit or report in reply he wishes the court to take into consideration; and

(2) except where the court requires otherwise, lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and

¹⁰ Rule 3(1) of 1987 Rules.

¹¹ Rule 6(1) of the 1987 Rules.

¹² Rule 6(2) of the 1987 Rules.

(3) at the same time serve a copy of the affidavits/reports and exhibits upon the defendant.

If, as a result of the court's requirement, exhibits are not lodged in accordance with 8.6(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

8.7

Prior to the first hearing of the disqualification application, the time for serving evidence may be extended by written agreement between the parties. After the first hearing, any extension of time for serving evidence is governed by CPR rules 2.11 and 29.5.

8.8

So far as is possible all evidence should be filed before the first hearing of the disqualification application.

9. The first hearing of the disqualification application

9.1

The registrar shall either determine the case at the first hearing or give directions and adjourn it.¹³

9.2

All directions should insofar as possible be sought at the first hearing of the disqualification application so that the disqualification application can be determined at the earliest possible date. The parties should take all possible steps to avoid successive directions hearings.

10. The trial

10.1

Trial bundles containing copies of –

(1) the claim form;

(2) the acknowledgment of service;

¹³ Rule 7(3) of the 1987 Rules.

(3) all evidence filed by or on behalf of each of the parties to the proceedings, together with the exhibits thereto;

(4) all relevant correspondence; and

(5) such other documents as the parties consider necessary;

shall be lodged with the court, in accordance with the time limits and guidelines specified in the Chancery Guide.

10.2

Skeleton arguments should be prepared by all parties, whether the case is to be heard by a registrar or a judge. They should comply with all relevant guidelines, in particular the Chancery Guide.

10.3

Where appropriate the advocate for the claimant should also provide: (a) a chronology; and (b) a list of persons involved in the facts of the case.

10.4

The documents mentioned in paragraph 10.1–10.3 above must be delivered to the appropriate court office.

10.5

Copies of documents delivered to the court must, so far as possible, be provided to each of the other parties to the disqualification application.

10.6

The provisions in paragraphs 10.1 to 10.5 above are subject to any order of the court making different provision.

11. Uncontested disposals

11.1

If the defendant fails to file evidence within the time set out in paragraph 9.4 above and/or within any extension of time granted by the court, the court may make an order that unless the defendant files evidence by a specified date he shall be debarred from filing evidence without the permission of the court. If the defendant then fails to file evidence within the time specified by the debarring order and subject to any further court order, the disqualification application will be determined by way of an uncontested disposal hearing.

11.2

Not less than 3 days prior to an uncontested disposal hearing, bundles containing copies of –

- (1) the claim form;
 - (2) the acknowledgment of service;
 - (3) all evidence filed by the claimant together with the exhibits thereto;
 - (4) any relevant correspondence;
- shall be lodged with the court.

11.3

The claimant should in all cases prepare a skeleton argument, which shall be lodged no later than 2 days before the hearing.

11.4

The provisions in paragraphs 11.1 to 11.3 above are subject to any order of the court making different provision.

12. Carecraft procedure

12.1

The parties may invite the court to deal with the disqualification application under the procedure adopted in *Re Carecraft Construction Co Ltd* [1994] 1 WLR 172, as clarified by the decision of the Court of Appeal in *Secretary of State for Trade and Industry v Rogers* [1996] 4 All ER 854 . The claimant must submit a written statement of agreed or undisputed facts, and an agreed period of disqualification or an agreed range of years (e.g. 2 to 5 years; 6 to 10 years; 11 to 15 years).

12.2

Unless the Court otherwise orders, a hearing under the *Carecraft* procedure will be held in private.

12.3

If the Court is minded to make a disqualification order having heard the parties' representations, it will usually give judgment and make the disqualification order in public. Unless the Court otherwise orders, the written statement referred to in paragraph 12.1 shall be annexed to the disqualification order.

13. Making and setting aside of disqualification order

13.1

The court may make a disqualification order against the defendant, whether or not the defendant appears, and whether or not he has completed and returned the acknowledgment of service of the claim form, or filed evidence.¹⁴

13.2

Any disqualification order made in the absence of the defendant may be set aside or varied by the court on such terms as it thinks just.¹⁵

14. Service of orders

14.1

Service of orders (including any disqualification order) will be the responsibility of the claimant.

PART THREE: APPLICATIONS UNDER SECTIONS 7(2) AND 7(4) OF THE ACT

15. Provisions applicable to applications under section 7(2) of the Act to make a disqualification application after the end of the 2 year period specified

15.1

Applications under section 7(2) of the Act shall be made by Practice Form N208 under CPR Part 8 save where it is sought to join a director or former director to existing proceedings, in which case such application shall be made by application notice under CPR Part 23, and Practice Direction 23A shall apply save as modified below.

15.2

Service of claim forms and application notices seeking orders under section 7(2) of the Act will be the responsibility of the applicant and will not be undertaken by the court.

15.3

¹⁴ Rule 8(1) of the 1987 Rules.

¹⁵ Rule 8(2) of the 1987 Rules.

Every claim form and application notice by which such an application is begun and all witness statements, affidavits, notices and other documents in relation thereto must be entitled in the matter of the company or companies in question and in the matter of the Act.

16. Applications for extra information made under section 7(4) of the Act

16.1

Such applications may be made:

- (1) by Practice Form N208 under CPR Part 8;
- (2) by application notice in existing disqualification proceedings; or
- (3) by application under the Insolvency Rules in the relevant insolvency, if the insolvency practitioner against whom the application is made remains the officeholder.

16.2

Service of claim forms and application notices seeking orders under section 7(4) of the Act will be the responsibility of the applicant and will not be undertaken by the court.

16.3

Every claim form and application notice by which such an application is begun and all witness statements, affidavits, notices and other documents in relation thereto must be entitled in the matter of the company or companies in question and in the matter of the Act.

PART FOUR: APPLICATIONS FOR PERMISSION TO ACT

17. Commencing an application for permission to act

17.1

This Practice Direction governs applications for permission to act made under:

- (1) section 17 of the Act for the purposes of any of sections 1(1)(a), 1A(1)(a) or 9B(4); and
- (2) section 12(2) of the Act.

17.2

Sections 12 and 17 of the Act identify the courts which have jurisdiction to deal with applications for permission to act. Subject to these sections, such applications may be made:

(1) by Practice Form N208 under CPR Part 8; or

(2) by application notice in an existing disqualification application.

17.3

In the case of a person subject to disqualification under section 12A or 12B of the Act (by reason of being disqualified in Northern Ireland), permission to act notwithstanding disqualification can only be granted by the High Court of Northern Ireland.

18. Headings

18.1

Every claim form by which an application for permission to act is begun, and all affidavits, notices and other documents in the application must be entitled in the matter of the company or companies in question and in the matter of the Act.

18.2

Every application notice by which an application for permission to act is made and all affidavits, notices and other documents in the application shall be entitled in the same manner as the heading of the claim form in the existing disqualification application.

19. Evidence

19.1

Evidence in support of an application for permission to act shall be by affidavit.

20. Service

20.1

Where a disqualification application has been made under section 9A of the Act or a disqualification undertaking has been accepted under section 9B of the Act, the claim form or application notice for permission to act (as appropriate), together with the evidence in support thereof, must be served on the Office of Fair Trading or specified regulator which made the relevant disqualification application or accepted the disqualification undertaking (as the case may be).

20.2

In all other cases, the claim form or application notice (as appropriate), together with the evidence in support thereof, must be served on the Secretary of State.

20.3

Addresses for service on government departments are set out in the List of Authorised Government Departments issued by the Cabinet Office under section 17 of the Crown Proceedings Act 1947, which is annexed to the Practice Direction supplementing Part 66.

PART FIVE: APPLICATIONS IN THE COURSE OF PROCEEDINGS

21. Form of application

21.1

CPR Part 23 and Practice Direction 23A shall apply in relation to applications governed by this Practice Direction save as modified below.

22. Headings

22.1

Every notice and all witness statements and affidavits in relation thereto must be entitled in the same manner as the Claim Form in the proceedings in which the application is made.

23. Service

23.1

Service of an application notice in disqualification proceedings will be the responsibility of the party making such application and will not be undertaken by the court.

23.2

Where any application notice or order of the court or other document is required in any application to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit, and may also require such proof of service as it thinks fit. Section IV of CPR Part 6 does not apply.

PART SIX: DISQUALIFICATION PROCEEDINGS OTHER THAN IN THE ROYAL COURTS OF JUSTICE

24. Modifications

24.1

Where a disqualification application or a section 8A application is made by a claim form issued other than in the Royal Courts of Justice this Practice Direction shall apply with the following modifications.

(1) Upon the issue of the claim form the court shall endorse it with the date and time for the first hearing before a district judge. The powers exercisable by a registrar under this Practice Direction shall be exercised by a district judge.

(2) If the district judge (either at the first hearing or at any adjourned hearing before him) directs that the disqualification claim or section 8A application is to be heard by a High Court judge or by an authorised circuit judge he will direct that the case be entered forthwith in the list for hearing by that judge and the court will allocate (i) a date for the hearing of the trial by that judge and (ii) unless the district judge directs otherwise a date for the hearing of a Pre Trial Review by the trial judge.

PART SEVEN: DISQUALIFICATION UNDERTAKINGS

25. Costs

25.1

The general rule is that where an undertaking is given after a disqualification application has been commenced the court will order the defendant to pay the costs where the claimant has accepted a disqualification undertaking.

25.2

The general rule will not apply where the court considers that the circumstances are such that it should make another order.

PART EIGHT: APPLICATIONS UNDER SECTION 8A OF THE ACT TO REDUCE THE PERIOD FOR WHICH A DISQUALIFICATION UNDERTAKING IS IN FORCE OR TO PROVIDE FOR IT TO CEASE TO BE IN FORCE

26. Headings

26.1

Every claim form by which a section 8A application is begun and all affidavits, notices and other documents in the proceedings must be entitled in the matter of a disqualification undertaking and its date and in the matter of the Act.

27. Commencement: the claim form

27.1

Section 8A(3) of the Act identifies the courts which have jurisdiction to deal with section 8A applications.

27.2

A section 8A application shall be commenced by a claim form in the form annexed hereto issued:

(1) in the case of a disqualification undertaking given under section 9B of the Act, in the High Court out of the office of the companies court at the Royal Courts of Justice;

(2) in any other case,

(a) in the High Court out of the office of the companies court or a chancery district registry which has jurisdiction under the Act; and

(b) in the County Court which has jurisdiction under the Act, out of the appropriate county court office.

27.3

In section 8A applications the procedure set out in CPR Part 8, as modified by the Disqualification Rules and this Practice Direction shall apply. CPR rule 8.2 (contents of the claim form) shall not apply. CPR rule 8.1 (3) (power of the Court to order the application to continue as if the claimant had not used the Part 8 procedure) shall not apply.

27.4

In the case of a disqualification undertaking given under section 9B of the Act, the defendant to the section 8A application shall be the Office of Fair Trading or specified regulator which accepted the undertaking. In all other cases, the Secretary of State shall be made the defendant to the section 8A application.

27.5

Service of claim forms in section 8A applications will be the responsibility of the claimant and will not be undertaken by the court. If serving by first class post on the

defendant's last known address the day of service shall, unless the contrary is shown, be deemed to be the 7th day next following that on which the claim form was posted. Otherwise, Sections I and II of CPR Part 6 apply. Attention is drawn to CPR r 6.14(2) regarding a certificate of service of the claim form.

27.6

Section IV of CPR Part 6 shall not apply. In any disqualification proceedings where a claim form or other document is required to be served on any person who is not in England and Wales, the court may order service on him to be effected within such time and in such manner as it thinks fit, may require such proof of service as it thinks fit, and may give such directions as to acknowledgment of service as it thinks fit.

27.7

The claim form served on the defendant shall be accompanied by an acknowledgment of service in the form annexed hereto.

28. Acknowledgment of service

28.1

The defendant shall:

(1) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and

(2) serve a copy of the acknowledgment of service on the claimant and any other party.

28.2

Where the defendant has failed to file an acknowledgment of service and the time period for doing so has expired, the defendant may nevertheless attend the hearing of the application and take part in the hearing as provided for by section 8A(2) or (2A) of the Act. However, this is without prejudice to the Court's case management powers and its powers to make costs orders.

29. Evidence

29.1

Evidence in section 8A applications shall be by affidavit. The undertaking (or a copy) shall be exhibited to the affidavit.

29.2

When the claim form is issued:

- (1) the affidavit in support of the section 8A application must be filed in court;
- (2) except where the court requires otherwise, exhibits must be lodged with the court where they shall be retained until the conclusion of the proceedings; and
- (3) copies of the affidavit and exhibits shall be served with the claim form on the defendant.
- (4) If, as a result of the court's requirement, exhibits are not lodged in accordance with 28.2(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

29.3

The defendant shall, within 28 days from the date of service of the claim form:

- (1) file in court any affidavit evidence that he wishes the court to take into consideration on the application; and
- (2) except where the court requires otherwise, lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and
- (3) at the same time, serve upon the claimant a copy of the affidavits and exhibits.

If, as a result of the court's requirement, exhibits are not lodged in accordance with 28.3(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

29.4

The claimant shall, within 14 days from receiving the copy of the defendant's evidence:

- (1) file in court any further affidavit evidence in reply he wishes the court to take into consideration; and
- (2) except where the court requires otherwise, lodge the exhibits with the court where they shall be retained until the conclusion of the proceedings; and
- (3) at the same time serve a copy of the affidavits and exhibits upon the defendant.

If, as a result of the court's requirement, exhibits are not lodged in accordance with 28.4(2), the exhibits should be available at the trial and any other hearing at which reference to them may be made.

29.5

Prior to the first hearing of the section 8A application, the time for serving evidence may be extended by written agreement between the parties. After the first hearing, the extension of time for serving evidence is governed by CPR rules 2.11 and 29.5.

29.6

So far as is possible all evidence should be filed before the first hearing of the section 8A application.

30. Hearings

30.1

Insofar as is relevant the provisions of paragraph 9 in Part Two above concerning hearings shall apply in respect of section 8A applications as they do in respect of disqualification applications.

31. The trial

31.1

Insofar as is relevant the provisions of paragraph 10 in Part Two above concerning trials shall apply in respect of section 8A applications as they do in respect of disqualification applications.

PART NINE: APPEALS

32. Appeals

32.1

Rules 7.47 and 7.49A of the Insolvency Rules, as supplemented by Part Four of the Insolvency Proceedings Practice Direction, apply to an appeal from, or review of, a decision made by the court in the course of:

- (1) disqualification proceedings under any of sections 6 to 8A or 9A of the Act;
- (2) an application made under section 17 of the Act for the purposes of any of sections 1(1)(a), 1A(1)(a) or 9B(4), for permission to act notwithstanding a disqualification order made, or a disqualification undertaking accepted, under any of sections 6 to 10.

Any such decision, and any appeal from it, constitutes ‘insolvency proceedings’ for the purposes of the Insolvency Proceedings Practice Direction.

32.2

An appeal from a decision made by the court in the course of disqualification proceedings under any of sections 2(2)(a), 3 or 4 of the Act or on an application for permission to act notwithstanding a disqualification order made under any of those sections is governed by CPR Part 52 and Practice Direction 52.