

## ***APPENDIX 1***

### Draft Practice Direction

#### **PRACTICE DIRECTION 51[\*] – SHORTER AND FLEXIBLE TRIALS PILOT SCHEMES**

This Practice Direction supplements various CPR rules.

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

General	Paragraph 1
The Shorter Trials Scheme	Paragraph 2
The Flexible Trials Scheme	Paragraph 3

#### **1) General**

- (1) This Practice Direction is made under rule 51 of the Civil Procedure Rules (CPR). It provides for a pilot of two schemes, the Shorter Trials scheme and the Flexible Trials scheme, to-
  - (a) operate from [*date*];
  - (b) operate in the courts situated in the Royal Courts of Justice, Rolls Building, Fetter Lane, London that is the Chancery Division (including the Patents Court and the Companies Court), the Commercial Court and the Technology and Construction Court (“the Rolls Building courts”);
  - (c) apply to claims started on or after [ *date* ].
- (2) Where the provisions of this Practice Direction conflict with the provisions of other provisions of the CPR or other Practice Directions, this Practice Direction shall take precedence.
- (3) In calculating the time provided by any order fixing, extending or abridging time under the Shorter Trials Scheme the period from 24 December to 2 January next following (both days inclusive) is excluded.
- (4) Where a case is agreed or ordered to be suitable for the Shorter Trials Scheme, the Court expects the parties and their representatives to cooperate with, and assist, the Court in ensuring the proceeding is conducted in accordance with the Scheme so that the real issues in dispute are identified as early as possible and are dealt with in the most efficient way possible.

#### **2) The Shorter Trials Scheme**

- (1) Shorter Trials Scheme - general

- (a) A claim in the Shorter Trials Scheme may be started in any of the Rolls Building Courts.
- (b) The Shorter Trials Scheme is for commercial and business cases.
- (c) The Shorter Trials Scheme will not normally be suitable for:
  - (1) cases including an allegation of fraud or dishonesty;
  - (2) cases that raise complex disputes of fact, which are likely to require significant disclosure and/or reliance upon extensive witness evidence in order for such issues to be resolved;
  - (3) cases involving multiple issues and multiple parties, save for Part 20 counterclaim for revocation of an intellectual property right;
  - (4) cases in the Intellectual Property Enterprise Court.
- (d) The length of trials in the Shorter Trials Scheme will be no more than 4 days in court.
- (e) All Shorter Trials Scheme claims will be allocated to a designated judge at the time of the first case management conference (CMC) or earlier if necessary.
- (f) All proceedings in the Shorter Trials Scheme will normally be heard or determined by the designated judge except that:
  - (1) another judge may hear urgent applications if the designated judge is not available;
  - (2) unless the court otherwise orders, any application relating to the enforcement of a judgment or order for the payment of money will be dealt with by a master of the Queen's Bench Division or of the Chancery Division or a district judge.
- (g) Provisions in other rules or practice directions which refer to a master or district judge are to be read, in relation to claims in the Shorter Trials Scheme, as if they referred to a judge.

## (2) Starting proceedings in the Shorter Trials Scheme

- (a) Claims in the Shorter Trials Scheme must be issued in the appropriate registry in the Rolls Building, that is to say the Chancery Registry, the Admiralty and Commercial Registry, and the Technology and Construction Court Registry.
- (b) As appropriate, the claim form must be marked in the top right hand corner as follows:
  - (1) “Queen's Bench Division, Commercial Court, Shorter Trials Scheme”;

- (2) “Chancery Division, Shorter Trials Scheme”, “Chancery Division, Companies Court, Shorter Trials Scheme”, “Chancery Division, Patents Court, Shorter Trials Scheme” as appropriate; or
- (3) “Queen’s Bench Division, Technology and Construction Court, Shorter Trials Scheme”.

(3) Transferring proceedings to or from the Shorter Trials Scheme

- (a) An application by a defendant, including a Part 20 defendant, for an order transferring proceedings out of the Shorter Trials Scheme should be made promptly and normally not later than the first CMC. An application may be made on paper prior to the first CMC if appropriate.
- (b) If a successful application is made to transfer a case out of the Shorter Trials Scheme, the case will then proceed in the court in which it was issued unless a judge otherwise orders;
- (c) An application to transfer a case into the Shorter Trials Scheme must be heard by a judge. If a judge orders a case to be transferred into the Shorter Trials Scheme, he may give case management directions.
- (d) An application by any party for an order transferring proceedings into the Shorter Trials Scheme should be made promptly and normally not later than the first case management conference.
- (e) In deciding whether to transfer a case into or out of the Shorter Trials Scheme, without prejudice to the generality of the overriding objective, the court will have regard to the type of case the Scheme is for, the suitability of the case to be a part of the Scheme and the wishes of the parties.

(4) Proceedings in the Shorter Trials Scheme

- (a) The procedure set out in this paragraph shall be substituted for any applicable pre-action protocols.
- (b) Save in cases of urgency, a letter of claim should be sent giving succinct but sufficient details of the claim to enable the potential defendant to understand and to investigate the allegations.
- (c) The letter of claim should notify the proposed defendant of the intention to adopt the Shorter Trials Scheme procedure.
- (d) The proposed defendant should respond within 14 days stating whether it agrees to or opposes that procedure, or whether it has insufficient information to commit itself either way.
- (e) Particulars of Claim must be issued and served with the Claim Form.
  - (1) The Particulars of Claim should include:

- (a) a brief summary of the dispute and identification of the anticipated issues;
  - (b) a full statement of all relief or remedies claimed;
  - (c) detailed calculations of any sums claimed.
- (2) The Particulars of Claim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.
- (3) The Particulars of Claim should be accompanied by a bundle of core documents on which the Claimant relies but also documents on which the other side is likely to rely.
- (f) The Claim Form and Particulars of Claim shall be issued and served promptly following the 14 day period allowed for the defendant's response to the letter of claim, or the defendant's response, if a longer period for response is agreed between the parties.
- (g) The Claimant shall, promptly after issuing the Claim Form and Particulars of Claim take steps to fix a CMC for a date approximately (but not less than) eight weeks after the Defendant is due to acknowledge service of the Claim Form.
- (h) The Defendant shall be required to file an acknowledgement of service within the time periods prescribed by the CPR.
- (i) If the Defendant files an acknowledgement of service stating that he wishes to dispute the court's jurisdiction, the period for serving and filing a defence is 28 days after filing of the acknowledgement of service (unless an application to challenge the jurisdiction is made on or before that date, in which case no defence need be served before the hearing of the application: see CPR 11(7) and (9)).
- (j) Cases where the jurisdiction of the Court is challenged may not be assigned to the Shorter Trials Scheme unless and until the question of the Court's jurisdiction has been resolved.
- (k) The Defence and any Counterclaim must be served within 28 days of acknowledgment of service of the Claim Form.
- (1) The Defence should include:-
- (a) a statement indicating whether it is agreed that the case is appropriate for the Shorter Trials Scheme and, if not, why not;
  - (b) a summary of the dispute and identification of the anticipated issues (if different to that of the Claimant).

- (2) The Defence and Counterclaim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.
  - (3) The Defence should be accompanied by a bundle of any additional core documents on which the Defendant intends to rely.
- (l) Unless such extension would require alteration of the date for the CMC if it has already been fixed, the Defendant and the Claimant may agree that the period for serving and filing a defence shall be extended by up to 14 days. However, any such agreement and brief reasons must be evidenced in writing and notified to the court.
  - (m) Reply and Defence to Counterclaim to be served within 14 days thereafter.
  - (n) If the suitability of the Shorter Trials Scheme procedure is disputed then that issue will be determined at the first CMC, if not before, and further directions given in the light of that determination.
  - (o) Each party should serve a Case Management Information Sheet adopting the modified form at Appendix [ ] to this Practice Direction.
  - (p) The solicitors for the Claimant will be responsible for producing and filing the Case Memorandum and List of Issues, and where appropriate for revising it.
  - (q) The Claimant's solicitors shall provide a draft the Case Memorandum and List of Issues to the Defendant's solicitors in sufficient time to enable the parties to use their best endeavours to discuss and agree the contents thereof prior to filing the CMC bundle at Court.
  - (r) At the CMC the Court will:
    - (1) review the issues;
    - (2) approve a List of Issues;
    - (3) give directions for trial;
    - (4) fix a trial date (or window), which should be not more than 9 months after the CMC and with a trial length of not more than 4 days (excluding reading time);
    - (5) fix a date for a Pre Trial Review.
  - (s) Disclosure
    - (1) CPR r31.5(2) will not apply;
    - (2) If and insofar as any party wishes to seek disclosure from another party of particular documents or classes of documents or of documents

relating to a particular issue, they must write to the other party to make such requests not less than seven days in advance of the CMC and, absent an agreement regarding the extent of the disclosure to be given, raise such requests at the CMC.

- (3) Unless agreed by the parties or otherwise ordered at the CMC, the following provisions for disclosure will apply:
    - (a) The parties shall, within 4 weeks of the CMC, make and serve a disclosure list in accordance with rule 31.10 and serve copies of all documents in the list, inspection of which is not objected to.
    - (b) The documents to be listed in the disclosure list are:
      - (i) The documents on which they rely as supporting their case;
      - (ii) The documents requested by the other party under 2(4)(r)(2) above that it agreed to produce or was ordered to produce by the Court;
      - (iii) Any documents the existence and contents of which they are aware and which would fall to be disclosed under CPR 31.6(b).
    - (c) Each party must also provide a Disclosure Statement containing a brief description of the steps the party has taken to locate the documents disclosed.
  - (4) Applications for specific disclosure and further information are discouraged under the Shorter Trials Scheme and should not be made without good reason.
- (t) Witness statements
- (1) Unless otherwise ordered, witness statements will stand as the evidence in chief of the witness at trial.
  - (2) The court will consider at the CMC whether to order that witness evidence shall be limited to identified issues and/or to identified topics.
- (u) Experts
- (1) Expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the case management conference or as subsequently agreed by the parties or directed by the court.
- (v) Applications
- (1) Part 23 applies with the modifications set out in this paragraph.

- (2) The court will deal with all applications (save for the case management conference and pre-trial review) without a hearing in accordance with the following directions:
  - (a) All applications and documents filed in support must be concise;
  - (b) The respondent must answer in writing within 7 days. The response must consist be concise;
  - (c) Any reply from the applicant must be provided within 2 Business days and be concise;
  - (d) If any party contends the application should be dealt with at a hearing, they must give an explanation in writing;
  - (e) The court will deal with an application without a hearing unless the court considers it necessary to hold a hearing.
- (3) The period in CPR r23.10(2) within which a party may apply to vary an order made under r23.9 is 3 business days.
- (w) The periods set by this practice direction and any other time limits applicable to a case in the Shorter Trials Scheme under any rule, practice direction or order of the court may be extended by agreement by up to 7 days. In all other cases, such time limits may only be extended beyond 7 days by order of the court and for good reason.
- (x) Save in exceptional circumstances, the court will not permit a party to submit material at trial in addition to that permitted at the CMC.
- (y) Pre-Trial Review
  - (1) At the Pre-Trial Review the court will review the case and will fix the timetable for the trial, including time for speeches and for cross-examination.
- (z) The Trial
  - (1) The judge hearing the trial will be the designated judge unless it is impractical for that judge to do so.
  - (2) The court will manage the trial to ensure that, save in exceptional circumstances, the trial estimate is adhered to. Cross-examination will be strictly controlled by the court.
  - (3) The court will endeavour to hand down judgment within six weeks of the trial or (if later) final written submissions.
- (aa) Costs
  - (1) CPR rule 3.12 shall not apply to cases in the Shorter Trials Scheme.

(2) Save in exceptional circumstances:

(a) the court will make a summary assessment of the costs of the party in whose favour any order for costs is made; and

(b) rules 44.2(8), 44.7(b) and Part 47 do not apply.

(bb) Appeals

(1) The Court of Appeal will take into account the fact that a case was in the Shorter Trials Scheme when listing any appeal from such a case.

### 3) **The Flexible Trials Scheme**

(1) Flexible Trials Scheme - general

(a) The Flexible Trials Scheme applies to a claim started in any of the Rolls Building Courts.

(b) The Flexible Trials Scheme enables parties by agreement to adapt trial procedure to suit their particular case. Trial procedure encompasses pre-trial disclosure, witness evidence, expert evidence and submissions at trial.

(c) The Flexible Trials Scheme is designed to encourage parties to limit disclosure and to confine oral evidence at trial to the minimum necessary for the fair resolution of their disputes. Its aim is to reduce costs, reduce the time required for trial and to enable earlier trial dates to be obtained.

(d) The Flexible Trials Scheme provides a standard trial procedure as set out in paragraph (3) below, the Flexible Trials Procedure. This may be varied by agreement between the parties.

(2) Adoption of the Flexible Trials Scheme

(a) If the parties wish to adopt the Flexible Trials Scheme they should agree to do so in advance of the first case management conference and inform the court accordingly.

(b) If the parties wish to adopt a variation of the Flexible Trials Procedure such variations should be agreed in advance of the first case management conference and the court informed accordingly.

(c) Unless there is good reason to order otherwise, where the parties have adopted the Flexible Trials Scheme the court will give directions in accordance with Flexible Trials Procedure and any agreed variations of it.

(3) Flexible Trials Procedure

(a) Unless otherwise ordered, the following directions apply where the Flexible Trials Scheme is adopted:

- (1) Each party will be required to disclose the documents on which it relies and documents which are known to be adverse to its case. At the same time it may request any documents or classes of documents it requires from any other party. If the parties wish to agree that there be wider disclosure in accordance with CPR 31.5(7)(a) to (f) they should seek to do so in relation to limited and defined issues.
- (2) Witness evidence at trial will be given by written statements and oral evidence shall be limited to identified issues or identified witnesses, as directed at the case management conference or as subsequently agreed by the parties or directed by the court.
- (3) Expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the case management conference or as subsequently agreed by the parties or directed by the court.
- (4) Submissions at trial will be made in writing with oral submissions subject to a time limit, as directed at the case management conference or as subsequently agreed by the parties or directed by the court.