

The Shorter and Earlier Trial Procedures Initiative

Consultation Document

1. Judges from the Commercial Court, the Technology and Construction Court, the Chancery Division and Queen's Bench Division general list (Hamblen J, Edwards-Stuart J, Birss J and Jay J) were asked by the Chancellor to investigate possible procedures which could be adopted in order to achieve shorter and earlier trials. The focus of the review was on business related litigation.
2. The review involved investigating Fast Track procedures used in courts elsewhere and in arbitration and consultation with court users. In January 2015 the Judicial Executive Board decided that the committee's initial proposals should be progressed. An expanded committee was formed to develop detailed proposals. The existing judicial members were joined by Sara Cockerill QC and Ed Crosse of Simmons and Simmons.
3. The committee has made the following recommendations for business cases in the Rolls Building courts:
 - (1) The adoption of a piloted Shorter Trial procedure.
 - (2) The adoption of a piloted Flexible Trial procedure.
4. The Shorter Trial procedure involves a streamlined procedure leading to judgment within a year of issue of proceedings. For commercial parties it offers dispute resolution on a commercial timescale.
5. Cases would be case managed by docketed Judges with the aim of reaching trial within approximately 10 months of the issue of proceedings and judgment within six weeks thereafter.
6. The procedure would be suitable for cases which can be fairly tried on the basis of limited disclosure and oral evidence. The maximum length of trial would be four days.
7. The Flexible Trial procedure allows the parties, by agreement, to adapt court procedures to suit their case and encourages the use of a more simplified and expedited procedure than the full trial procedure currently provided for under the CPR.
8. The default Flexible Trial procedure involves:
 - (1) Disclosure limited to the documents on which the party relies and any specific disclosure it requires from any other party;

- (2) Factual evidence to be given by way of written statements and oral evidence limited to key witnesses and/or issues;
 - (3) Expert evidence to be given by way of written reports and oral evidence limited to key issues.
9. Subject to the overriding discretion of the court, the parties could, however, adapt these procedures to suit their particular case and have, for example, standard disclosure on identified issues and wider oral evidence. The key is flexibility and choice.
10. The aim of both proposals is the achievement of speedy but fair justice at a reasonable and proportionate cost. They should also help to foster a change in litigation culture which involves the recognition that comprehensive disclosure and a full, oral trial on all issues is often not necessary for justice to be achieved. That recognition will in turn lead to significant savings in the time and costs of litigation.
11. Draft procedures have been produced for both proposals as set out in the attached Appendix. The procedures are in the form of pilot scheme practice directions under CPR Part 51.

The Working Group invites any comments on the pilot schemes and the proposed draft instruments

12. Responses to the Consultation Document should be sent to

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13. The deadline for comments is 29 May 2015.