

Practice Note: Fixed-end trials

Following the success of last year's pilot scheme, all trials in the Chancery Division in London (including trials before Masters and Registrars) are in future to be conducted on a fixed-end basis. That means that each trial will, save in exceptional circumstances, be required to be completed within the period allocated to it.

The adoption of fixed-end trials makes it all the more important that parties should ensure that time estimates are accurate and, where appropriate, revise them. The parties need to consider carefully how long each element of the case is likely to take. Every time estimate should also take account of the length of time that the judge is likely to require for pre-reading. Where it is thought that it will be appropriate to have an interval between the close of evidence and final submissions, the time estimate should factor this in as well (taking into account both the preparation of the submissions and, where written submissions are to be supplied, the time that the judge will need to digest them). In practice, it is vital for the parties to agree a trial timetable at as early a stage as possible and to review it if circumstances change. In future, timetables (agreed, if possible) should always be filed at the same time as the skeleton arguments for the trial.

It is to be stressed that, as mentioned above (and also in the Chancery Guide), every time estimate must make a realistic allowance for pre-reading by the judge. The time within which a case must be concluded will thus run from the beginning of the judge's pre-reading. Should the period allowed for pre-reading prove inadequate, the time available in Court will be shortened correspondingly. The same principle will apply if too little time is allowed for the judge to read any written closing submissions.

A time estimate for the trial will typically have been provided at an early stage of the proceedings. Where, as will usually be appropriate, a case management conference has been held, this is likely to have fixed a time estimate. If an existing estimate now seems erroneous, it should be revised as soon as practicable, and in any event by the date of any pre-trial review. The Court will, if possible, seek to accommodate an increase (especially a modest one) if appropriate without changing the trial window.

Where one or more parties to a case propose that the time estimate for a trial should be changed but one or more other parties disagree, the matter must be referred to a Master, Registrar or Judge, as appropriate. Listing cannot change the time estimate given for a trial without either the parties' consent or a direction from a Master, Registrar or Judge.

A pre-trial review should be held about four weeks before the trial in any case estimated to last five days or more. Among other things, the judge hearing the pre-trial review will be concerned to check that the time estimate is realistic and that the parties have taken appropriate steps to agree a timetable for the trial. A trial will, however, be conducted on a fixed-end basis even where there has been no pre-trial review (as will typically be the case with trials lasting less than five days).

Sir Terence Etherton, Chancellor of the High Court