

Shorter and Flexible Trial Procedures Pilot Schemes

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1. In October 2015, the Courts situated in the Rolls Building will start administering two pilot schemes: the Shorter Trial procedure and the Flexible Trial procedure. The schemes will be in operation in the Commercial Court, the Technology and Construction Court, the Chancery Division and Mercantile Court in the Rolls Building.
2. The aim of both pilot schemes is to achieve shorter and earlier trials for business related litigation, at a reasonable and proportionate cost. The procedures should also help to foster a change in litigation culture, which involves 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.
3. The Shorter Trial procedure offers dispute resolution on a commercial timescale. Cases will 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. The procedure is intended 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, including reading time.
4. The Flexible Trial procedure involves the adoption of more flexible case management procedures where the parties so agree, resulting in a more simplified and expedited procedure than the full trial procedure currently provided for under the CPR.

Formulation of the procedures

5. In the autumn of 2014 four judges from the Rolls Building courts (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. This judicial committee was later expanded to include Sara Cockerill QC (Essex Court Chambers) and Ed Crosse (Simmons & Simmons LLP). The committee met a number of times and prepared a draft Practice Direction for pilot schemes relating to both of the proposed procedures.
6. The draft Practice Direction was the subject of public consultation in May 2015 with judges, court users as well as the Ministry of Justice and Her Majesty's Courts and Tribunal Service. Numerous positive responses were received and a number of detailed drafting points and suggestions as to how the Practice Direction could be improved have been taken into account in a revised draft.

Overview and guidance on the procedures

7. The key features of the proposed Practice Direction for the Shorter Trial pilot scheme include the following:
 - **Scope:** The scheme is intended for commercial and business cases, which do not require extensive disclosure, witness or expert evidence. The amount at issue in the proceedings may be relevant to, but not determinative of, the question of suitability.
 - **Docketed judges:** Cases will be managed and tried by docketed judges to provide greater continuity, efficiency and an increased judicial understanding of and control over the management of the case.

- **Opt in:** The scheme is not mandatory - a claimant must first elect to “opt in”, although the court may encourage the parties to do so in appropriate cases. The parties may also adopt the scheme by agreement and the defendant may apply for an order that a claim be transferred in.
- **Transfer out:** The defendant has a right promptly to apply to transfer the case out of the scheme on the grounds of suitability. In this regard, the court is alive to the risk that a well-prepared claimant may attempt to use the scheme to “ambush” a defendant during the pre-CMC period. The court may sanction such behaviour in costs if a claimant has acted in an oppressive or unfairly prejudicial manner.
- **Pre-action protocols:** These will not apply but, save in cases of urgency, a letter of claim should be sent notifying the defendant of the intention to issue in the scheme. The defendant should respond in 14 days.
- **Pleadings:** Statements of case should be no more than 20 pages long and should attach core documents. The Claim Form and Particulars of Claim should be served promptly following the period for the defendant’s response (subject to agreement). The Defence must be served 28 days thereafter.
- **Early CMC:** On issue of the Claim Form, the Claimant should take steps to fix a CMC for approximately 12 weeks after the date for acknowledgement of service.
- **Limited disclosure:** Standard Disclosure will not apply to the scheme. Instead, an arbitration style approach will be taken, with disclosure limited to documents relied upon and documents requested by the other party and either agreed or ordered. Document requests will be exchanged 14 days in advance of the CMC.
- **CMC:** At the CMC, the court will review and approve a list of issues, resolve any disputed document requests, consider ADR, give directions and fix dates (or windows) for the trial and PTR.
- **On paper applications:** To minimise costs and increase speed, applications other than those made at the CMC will be primarily on paper and/or conducted by telephone.
- **Early fixing of the Trial:** The trial will be fixed for a date not more than 8 months after the CMC and the length will be not more than 4 days, including reading time.
- **Evidence:** Unless otherwise ordered, factual and expert evidence will be in writing and limited in length. Oral evidence will be limited to identified issues, as directed at the CMC or subsequently.
- **Extensions of time:** Timetables should be strictly adhered to. However, the parties may agree to a single 14 day extension for the Defence and a single 7 day extension to any other date set by the rules or by directions. Otherwise, time can only be extended by the court and for good reason.
- **PTR:** At the PTR, the court will fix a timetable for the trial and give directions to ensure that it is strictly adhered to – for example a “chess clock” approach in respect of opening submissions and cross examination may be used.
- **Trial:** The trial will be before the same designated judge unless that is impractical.
- **Judgment:** The court will endeavour to hand down judgment within six weeks of the trial or (if later) final written submissions.

- **Costs:** Costs budgeting will not apply, unless the parties otherwise agree. Instead, the costs of the entire case will be assessed summarily by the trial judge, the parties having exchanged schedules of costs three weeks after the trial.

The Flexible Trial procedure

8. The Flexible Trial procedure 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. It 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. The key is flexibility and choice.
9. A default Flexible Trial procedure is provided. This will apply where the parties adopt the procedure, save and to the extent that the parties agree or the court orders otherwise.
10. The procedure provides considerable flexibility to the parties to agree a procedure appropriate to their case and the court will seek to respect that agreement. However, the court retains ultimate control over the procedure to be adopted.

Next steps

11. Pilots of the two schemes will commence at the start of the new term in October 2015 and are scheduled to last for 2 years.
12. Parties and their advisers are strongly encouraged to consider using the scheme for suitable cases.
13. It is recognised that there may be aspects of the schemes which require refinement over time. The courts will work closely with users to clarify and resolve any such issues in an efficient way.
14. Similarly, and consistent with the overriding objective, parties participating in the scheme will be expected to communicate and cooperate with each other to a high degree, with a view to ensuring that cases can, indeed, be determined in a cost effective and timely manner.

Issued on the authority of

The Chancellor, the Judge in Charge of the Commercial Court and the Judge in Charge of Technology and Construction Court