

GUIDE TO THE PREPARATION AND SERVICE OF BUNDLES, SKELETON ARGUMENTS AND AUTHORITIES IN THE BUSINESS & PROPERTY COURTS IN LIVERPOOL – SEPTEMBER 2021

This guide has been prepared to assist court users by summarising the requirements for the service of bundles, skeleton arguments and authorities for non-urgent cases in the Business and Property Courts in Liverpool other than insolvency petitions and insolvency applications as the Courts seek to return to normal on the easing of restrictions imposed during the COVID-19 pandemic.

The COVID-19 pandemic and its aftermath continue to present significant challenges to practitioners and to the judges, and the aim remains to promote cooperation to ensure that the work of the BPCs continues to operate as smoothly as possible.

These provisions apply unless the court otherwise orders in any particular case.

In summary, the main points are:

- **Where the bundle would exceed 350 pages, a core bundle is also required containing only the essential documents required for the relevant hearing.**
- **In respect of any hearing listed to last for 2 days or more, hard copy bundles should be lodged in addition as detailed below.**
- **Bundles or links to bundles should be lodged no later than three clear business days before the hearing, or as otherwise directed. They should only contain key documents (or extracts therefrom) required for the hearing, and comply with the guidance below.**
- **Replacement bundles should not be lodged. If additional documents need to be lodged, this should be by way of one supplemental bundle.**
- **Skeleton arguments (with copies of essential authorities or essential extracts from long authorities) should be filed no later than two clear business days before the hearing.**
- **Skeleton arguments should avoid excessive citation of authorities. Where well-established principles of law are relied on, reference to a textbook will suffice.**
- **If the case is on CE-file, bundles, skeleton arguments and authorities should be filed by uploading attachments or links to CE file. Please note that documents on CE file may not be accessible by a judge until they have been processed, which may take some time.**
- **If a case is not on CE file or the communication is urgent, bundles, skeleton arguments and authorities should be filed by sending attachments and/or links to LiverpoolBPC@justice.gov.uk.**
- **If an email address has been given for the judge who is going to hear the case, attachments or links should be sent directly to the judge as well as to the court.**

This guide sets out the latest time for lodging documents. Where possible, the parties should lodge documents earlier, to allow time for getting them to the judge and to ensure that the judge has time to read the material. The late filing of documents may lead to the court being unable to deal with the hearing in a fair manner and being forced to adjourn the hearing. In that event the court may have to consider whether to disallow costs or make an adverse costs order.

A separate guide applies to bundles in Insolvency petitions and insolvency applications. It can be found here: <https://www.judiciary.uk/wp-content/uploads/2020/10/North-BPC-Bundle-Guidance.pdf>.

1. Hearing Bundles

- a. A hearing bundle is required for every hearing. If no bundle has been lodged, the judge will have no documents to read, so it is likely that the hearing will have to be adjourned to the next available date.
- b. An electronic bundle should be lodged in every case, whether the case is heard remotely or in person.
- c. Save as referred to below, hard copy bundles should not be lodged and the electronic bundle lodged should be a single PDF bundle.
- d. If the electronic bundle to be lodged would exceed 350 pages, then there should be lodged:
 - i. A core bundle containing only the essential documents required for the relevant hearing. The core bundle will generally be considerably shorter than 350 pages and must only contain relevant statements of case, court orders, witness statements (without exhibits), experts reports (without exhibits/appendices), and any key documents (or extracts from long documents) essential to the particular hearing;
 - ii. A further bundle containing the remaining documents required for the hearing.
- e. In respect of a hearing listed to last for two days or more, and in other cases where the Court specifically directs, a hard copy bundle should also be lodged for the use of the Judge.
- f. However, if the hard copy bundle to be lodged will exceed 350 pages,
 - (i) In the case of all applications other than trials, the only hard copy bundle to be lodged should be a hard copy of the core bundle referred to in paragraph 1(d)(i) above unless the Court otherwise directs;
 - (ii) In the case of trials, a hard copy bundle mirroring the electronic bundle should be lodged in addition to a hard copy of the core bundle referred to in paragraph 1(d)(i) above, unless the Court directs to the contrary no less than 7 days before trial.
- g. Responsibility for lodging the hearing bundle will usually fall on the Applicant or Claimant. Where the Applicant or Claimant is a litigant in person, a represented party in the same case should assume the responsibility. If there are no represented parties, the Applicant or Claimant should assume responsibility for the bundle. The parties must co-operate and all parties have responsibility for ensuring that the court receives the bundle in time. Parties are reminded of the duty imposed upon them by CPR 1.3 to help the court to further the overriding objective.
- h. For interim applications, the bundle must be lodged at least three business days before the hearing, save where this is impossible owing to the urgency of the hearing.
- i. For trials, bundles for the judge should be lodged not less than three and not more than seven business days before the trial unless otherwise ordered.
- j. Bundles need to be provide for the witnesses. In every trial where a witness is to give evidence at court the party with responsibility for lodging the hearing bundle must bring a full hard copy bundle to court for the use of the attending witnesses, unless the parties have previously agreed that every attending witness will use an electronic bundle, in whole or in part, in which case the parties must agree how this will be effected and provide a

laptop computer and, as necessary, a sufficient size monitor and/or laptop operator. In every trial where a witness is giving evidence remotely, it is the responsibility of each party or their legal representatives to ensure that the witnesses that they propose to call to give evidence is able to access and use the trial bundle in the format that it is proposed to provide to them for use at trial.

- k. Late service of documents is not a good reason to delay lodging the bundle. If necessary, documents may be provided by supplemental bundle later.
- l. A bundle should be provided separately for every hearing (including adjourned hearings) unless the court orders otherwise.
- m. Bundles should comply with paragraph 27 of CPR PD32, paragraph 10.3 of CPR PD51O and any appropriate Court Guide. They should only contain the documents necessary to determine the hearing. To keep bundles to a manageable size, the parties should consider including only the relevant parts of documents.
- n. All electronic hearing bundles must be prepared so that:
 - i. They are paginated in ascending order from start to finish. The first page of the PDF should be numbered “1”, and so on. (Any original page numbers of documents within the bundle are to be ignored.) Index pages must be numbered as part of the single PDF document, they are not to be omitted when numbering the bundle; they are part of the single PDF and must be numbered. If a hard copy of the bundle is produced, the pagination on the hard copy must correspond exactly to the pagination of the PDF.
 - ii. Wherever possible the pagination therein is computer-generated; if this is not possible, pagination must be in typed form.
 - iii. The index page is hyperlinked to the pages or documents it refers to.
 - iv. Each document within the bundle is identified in the sidebar list of contents/bookmarks, by date and description (e.g., “email 11.9.21 from [x] to [y]”). The sidebar list must also show the bundle page number of the document.
 - v. They are text based, and not a scan of a hard copy bundle. If documents within a bundle have been scanned, optical character recognition should be undertaken on the bundle before it is lodged. (This is the process which turns the document from a mere picture of a document to one in which the text can be read as text so that the document becomes word-searchable, and words can be highlighted in the process of marking them up.) The text within the bundle must therefore be selectable as text, to facilitate highlighting and copying.
 - vi. Any document in landscape format has been rotated so that it can be read from left to right.
 - vii. The default display view size of all pages is always 100%.
 - viii. The resolution on the electronic bundle has been reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another.
 - ix. They have been given an electronic file name that identifies the bundle with the relevant case by including at the start the case number and the parties’ names in short form

e.g. "CR-2019-MAN-012345 Salmon v Trout."

- x. The electronic bundle lodged should be a single PDF bundle unless the length of the bundle is such that it would make it more navigable to be broken down into separate PDF bundles, but this may only be done if the pagination is computer-generated and runs throughout the bundles.
- o. Provision of an electronic bundle which does not comply with the above requirements is likely to hinder the judge in his or her preparation and conduct of the case and to increase the time which will be required for preparation and for the conduct of the hearing. The provision of a non-compliant electronic bundle may necessitate the adjournment of a hearing with consequent orders as to the bearing of any costs thrown away. Even if a hearing is able to proceed the judge is likely to order that the costs of preparing such a bundle shall not be recoverable.
- p. Once a hearing bundle has been lodged, no alterations should be made to it, nor any replacement bundle lodged. If necessary, an additional electronic bundle containing only further documents should be lodged. The parties should liaise to ensure that no more than one supplemental bundle is produced. Any supplemental bundle must have its own pagination starting at "1"; the pagination must not run on from the final page number in the principal hearing bundle.

2. Skeleton arguments

- a. Skeleton arguments are required on any matter of substance.
- b. They should in all cases be lodged not less than two business days before the hearing, save where the application is urgent and without notice in which case they should be lodged at the earliest opportunity.
- c. They should identify relevant authorities, with citation of the authorities in accordance with Practice Direction (Citation of Authorities) [2012] 1 WLR 780, restricted to the expression of legal principle rather than the application of such principle to particular facts. They should identify which authorities are being referred to for which propositions and the relevant paragraphs (or page numbers) of the authorities on which reliance will be placed. Where reference is made to well-established principles it is normally sufficient to refer to the content of any authoritative textbook, with copies of the relevant extract. Where reference is made to well-known quotations from well-established authorities it is normally sufficient simply to set out the quotation.

3. Authorities

- a. In trials and substantial applications, the parties should exchange skeleton arguments in sufficient time to allow a single joint bundle of authorities to be lodged no later than the time prescribed for lodging skeleton arguments.
- b. In any event, given that the authorities upon which a party seeks to rely should have been identified in the skeleton arguments, copies of the authorities should be lodged at court no later than the time at which the skeleton argument is lodged. If a party subsequently seeks to rely on authorities that are not identified in their skeleton argument (for example in reply to a proposition in another party's skeleton argument), copies of such additional authorities should be lodged at court as soon as reasonably practicable. The parties should liaise to ensure that no more than one bundle of additional authorities is produced.

- c. An electronic authorities bundle must comply with the guidance for bundles above. In addition, where possible it must contain a PDF of the relevant law report in the form it appears in the hard bound version of the most authoritative law report in question.

4. **Uploading of bundles, skeleton arguments and authorities**

- a. Electronic bundles, skeleton arguments and authorities should be uploaded to CE file either as an attachment or a link to an electronic data room. PDFs can be uploaded to CE file if the electronic file does not exceed 50Mb. A link to an electronic data room should be provided by uploading to CE file a letter in Word or PDF format containing a hypertext link to the data room. Access to the link must not require any form of registration or the provision of an email address, and any password must be included in the letter providing the link.
- b. Documents on CE file cannot always be seen by the judge until they have been processed by the Court, which can take some time. If filed late they will therefore not necessarily be available to the judge either prior to or at the hearing.
- c. If the case is not on CE file, attachments or links, as the case may be, should be sent to the court by email to LiverpoolBPC@justice.gov.uk. In urgent cases only, this may also be used for sending attachments or links in cases on CE file.
- d. If the email address of the judge has been provided, attachments or links should be sent directly to that address as well.