

PRACTICE DIRECTION No 1 of 2019
IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN’S BENCH DIVISION (COMMERCIAL)
COMMERCIAL HUB

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Application and Scope

1. This Practice Direction comes into operation on 29 April 2019. It applies to commercial actions in which proceedings have been, or are, issued before, on or after this date.
2. This Practice Direction supersedes Practice Direction 1 of 2000. It incorporates Practice Note 1 of 2011, Practice Note 1 of 2013, Practice Note 3 of 2013, Practice Direction 1 of 2015 (Expert Evidence) and Practice Direction 6 of 2011 (Skeleton arguments and related documents).¹
3. Practitioners are reminded of their obligations to comply with the relevant provisions of the Rules of the Court of Judicature, in particular - but not limited to - Orders 1, 24, 38, 41, 53, 59, 62 and 72.
4. Practitioners are expected to comply fully with this Practice Direction. Failure to comply may result in the imposition of sanctions. These can include:
 - (i) Costs orders against the offending party and/or his legal representatives and/or his expert witness;
 - (ii) Dismissal of proceedings in whole or in part;
 - (iii) The striking out or limiting of claims by a plaintiff;
 - (iv) The striking out or limiting of a defence by a defendant;
 - (v) The striking out, disallowance or rejection of evidence which the party in default seeks to adduce.

The Commercial Hub

5. The Commercial Hub (“the Hub”) will comprise cases falling within Order 72 Rule 1(2), Chancery cases falling within Order 72 Rule 10, together with any Ancillary Relief applications and Judicial Review applications that involve commercial issues of some complexity, whether of fact or of law. The Commercial

¹Appendix A: PN 1/2011, Consolidated Practice Notes, amended by Master McCorry on 13 November 2018; Appendix B : PN 1/2013, including Scott Schedule Guidance & Pre-Action Protocol; issued 21 December 2012; Appendix C: PN 3/2013, Summons Court Commercial List; Appendix D: PD 1/ 2015, Expert Evidence; Appendix E: PD 6/2011, Skeleton Arguments, Appeal Books, Electronic Bundles; as amended 5 September 2012 & 8 January 2016.

Judge in charge of the Hub shall be the final arbiter of what cases are to be admitted to the hub. Any Chancery case, Family case or Judicial Review application will be heard by a judge from that Division although the judge hearing the case will do so as part of the Hub.

6. It shall be the duty of all practitioners involved in any case that fulfils the requirements of paragraph 5 above to refer it immediately to the Commercial Judge for entry into the Hub. Judges and Masters shall also refer such cases as are described above to the Commercial Judge for admission into the Hub. Once admitted to the Hub, each case shall be stamped on the writ or the originating process with the legend "Commercial Hub".

7. The Hub's objective is to serve the whole of Northern Ireland and, in particular, the commercial community. It is committed to the resolution of legal disputes expeditiously, efficiently and cost effectively. To that end, the Hub will sit throughout Northern Ireland, where there is a suitable venue available. It will hear preliminary issues which have the capacity to bring early resolution of any dispute. It will encourage ADR. Any unreasonable refusal to consider ADR may result in the imposition of a costs sanction by the Judge. The Hub will provide, when it is able to do so, judges for Early Neutral Evaluation.

8. When a case goes to trial in the Hub it will be the subject of case management, to ensure, in a fair manner, that the parties are, at the earliest appropriate stage, committed to their positions, to isolate the issues in dispute and to adjudicate on those issues as early as possible.

Effective case management includes:

- (a) Consistency (with sufficient flexibility) from the Commercial Judge;
- (b) Procedural steps which are devised and tailored to suit the particular case;
- (c) A culture of compliance with court directions.

9. It is the primary responsibility of the party on whom any deadline is imposed by any court direction or order to ensure that any deadline is met. If there is a good reason why the deadline cannot be met, then an application should be made to extend the time permitted **before** the time limit expires. If such an application is not made, there is then a duty imposed upon the other party or parties to draw that failure to the immediate attention of the Commercial Judge.

10. At all times the Hub will be governed by the overriding objective contained in Order 1 Rule 1(A), ensuring that all cases before it are dealt with justly and expeditiously.

Entry to the Hub

11. Any case falling within the definition in Order 72, rule 1(2) of the Rules of the Court of Judicature (Northern Ireland) 1980 may be entered into the Commercial List². In accordance with Commercial Practice Note 1 of 2013, practitioners are required to identify a Commercial List action by endorsing the Writ or any other originating process³ appropriately.

12. Where a Master considers that a Writ of Summons or any other Originating Process does not have the appropriate endorsement it will be transferred to the Commercial Judge to determine if it is a suitable case for the Hub.

13. A Chancery Division case involving commercial issues may be referred to the Commercial Judge to determine if it is a suitable case for the Hub. All such suitable cases may then be endorsed by the Chancery Judge or the Commercial Judge and treated as Hub cases, to be dealt with by a Judge of the Chancery Division, sitting as a Judge of the Hub.⁴

14. A Family Division case involving commercial ancillary relief issues may be referred to the Commercial Judge to determine if it is a suitable case for the Hub. All such suitable cases may then be endorsed by the Family Judge or the Commercial Judge and treated as Hub cases to be dealt with by a Judge of the Family Division, sitting as a Judge of the Hub.

²O. 72, r. 1(2), RCJ: "...commercial actions" shall include any cause relating to business or commercial transactions and, without prejudice to the generality of the foregoing words, any cause relating to contracts for works of building or engineering construction, contracts of engagement of architects, engineers or quantity surveyors, the sale of goods, insurance, banking, the export or import of merchandise, shipping and other mercantile matters, agency, bailment, carriage of goods and such other causes as the Commercial Judge may think fit to enter in the Commercial List."

³ 'any other originating process' includes, but is not limited to, an Originating Summons or Order 53 Statement.

⁴ This is without prejudice to Order 72, rule 10, RCJ: "A judge dealing with any aspect of an action pending in the Chancery Division, who deems the action similar in character to an action which might have been entered in the Commercial List of the Queen's Bench Division, shall have all the powers of the Commercial Judge in respect of that action."

15. A Judicial review case involving commercial issues may be referred to the Commercial Judge to determine if it is a suitable case for the Hub. All such suitable cases may then be endorsed by the Judicial Review Judge or the Commercial Judge and treated as Hub cases, to be dealt with by the Judicial Review Judge, sitting as a Judge of the Hub.

Case Management – Overview

16. All Hub cases are subject to robust case management. Case management conferences are generally to be listed on Fridays and will be allotted sufficient court time to deal with all relevant issues. The purpose of case management is to:

- (i) Ascertain the issues;
- (ii) Control the evidence gathering process; and
- (iii) Ensure a final hearing on those issues as soon as possible.

17. There will be three key stages:

- (a) Early Directions Hearing;
- (b) Case Management Conference; and
- (c) Pre-Trial Review unless the parties agree, and the Judge is satisfied, that all directions have been complied with and that there is no requirement for a Pre-Trial Review.

18. The Commercial Judge will case manage all cases in the Hub apart from:

- (a) those complex or exceptional cases which are allocated to a Judge immediately after the Early Directions Hearing; or
- (b) those cases falling within paragraphs 11 to 15 herein which may be case managed by a Judge sitting as a Judge of that Division but within the Hub.

19. This three-step case management system replaces the 'review' system. Case management hearings are important milestones in the life of a case with important decisions being made and directions being given which will shape the future litigation and the nature of the final hearing. There should only ever be a need for a maximum of three case management hearings, if the parties adhere to the directions they have been given. A further hearing may be permitted by the Judge, if requested in writing by either party, but this is likely to have costs consequences.

20. Cases which are fixed for hearing will remain fixed for hearing, except in exceptional circumstances. Any request or application for adjournment will be referred to the Judge.

Early Directions Hearing

21. An Early Directions Hearing will take place within 3 weeks of the date of service of the writ of summons or originating process. On the date of service of the writ, the plaintiff or his solicitor must notify the court office in writing. The purpose of an Early Directions Hearing is to allow the judge to give such early case management directions as he/she see fits, including:

- (a) A timetable for further pleadings;
- (b) Directions concerning expert evidence (such as issues to be addressed and questions to be answered), whether there should be a joint expert and the exchange of letters of instruction, where applicable;⁵
- (c) Directions concerning the early meeting of experts, and the filing of the minutes of their discussion in court;
- (d) Costs estimates for expert evidence, where applicable;
- (e) Costs estimates for either side, where applicable;
- (f) Directions concerning mandatory consideration of Alternative Dispute Resolution or, in appropriate cases, Early Neutral Evaluation;
- (g) Directions concerning discovery (see paragraph 24 below);
- (h) Setting the date for the Case Management Conference;

22. Urgent or bespoke Early Directions Hearings may be listed at the discretion of the Court upon written request to the Court Office from a party but will not, in any event, be listed later than 3 weeks from service of the writ of summons or originating process. The request shall state the basis for such a hearing being necessary and any urgency requiring expedition. Such cases that may be eligible for an urgent or bespoke Early Directions Hearing include, but are not limited to, cases in which:

- (a) a conditional appearance has been entered;

⁵ All expert evidence must be in compliance with Practice Direction 1 of 2015 (Appendix D) herein.

- (b) a party seeks a stay of proceedings;
- (c) a party seeks early discovery, for example, in procurement actions;
- (d) an automatic stay is involved and there may be a need to set this aside and/or an expedited trial;
- (e) the case involves a challenge to an Adjudicator's decisions and/or adjudication enforcement proceedings;
- (f) a party seeks summary judgment.

23. Applications for interim injunctive relief are case-managed at the discretion of the Judge.

24. Practitioners are encouraged to focus on a collaborative approach to discovery in order to comply with the overriding objective of Order 1 Rule 1(1)A of the Rules of the Court of Judicature and to achieve effective savings in terms of time and costs. Parties are encouraged to agree a discovery plan in advance of the Early Directions Hearing and to consider the appropriateness of:

- (i) no discovery;
- (ii) discovery to be given by each party on an issue by issue basis (which may be on different bases depending on the issue e.g. for certain issues, no discovery, on other issues standard discovery (see below) and on remaining issues, full discovery);
- (iii) discovery which is limited to those documents upon which the party relies and which are necessary for the other parties to understand the case against them ("standard discovery");
- (iv) full discovery in accordance with Order 24 of the Rules of the Court of Judicature, namely discovery of all documents relating to any matter in issue between the parties ("full discovery");
- (v) electronic discovery, utilising search words and/or predictive coding, where appropriate.

25. Where one party insists unilaterally on full discovery that party may be required, in accordance with Order 24 (and the Peruvian Guano case), to pay for the costs, or part of the costs, of the discovery process at the time of discovery, with those costs usually being costs in the cause. However, where full discovery is sought unilaterally, and the discovery exercise is subsequently shown to be of marginal or

limited or no assistance in the resolution of the dispute, the Commercial Judge may award the costs of the discovery process against the party insisting on full discovery, regardless of the outcome of the proceedings.

Case Management Conference

26. A date for the Case Management Conference will be fixed at the Early Directions Hearing.

27. The function of the Case Management Conference is to ensure that the proceedings are prepared for trial in a manner which is just, expeditious and likely to minimise the costs of the proceedings. It affords an opportunity for the Court to identify the issues of both fact and law which are actually in dispute and thereby prescribe the best means by which the disputes can be resolved.

28. All parties and all key persons are required to attend Case Management Conferences, including Counsel with carriage of the case, together with Senior Counsel (if instructed, and if possible), the solicitor with carriage of the case and the client.

29. Not less than seven days before the Case Management Conference, the plaintiff or petitioner or applicant shall file, **by noon**, and serve in hard copy and electronically the following documents:

- (a) the pleadings;
- (b) copies of any orders or interlocutory applications;
- (c) if a pre-trial timetable has been agreed or ordered, that timetable and if not a draft timetable which will include the parties' best estimate of the reading time required by the trial judge ;
- (d) any agreement in writing made by the parties as to discovery, or disputes as to the level of discovery;
- (e) an uncontentious summary of the case;
- (f) any agreement and/or information pertaining to expert evidence, including letters of instruction of any experts;
- (g) the estimated time required for the Judge to read the Core Bundle and authorities;
- (h) an agreed chronology;

- (i) an agreed list of issues or, if agreement cannot be achieved, each party's list of issues;
- (j) a list of relevant facts, agreed or in dispute;
- (k) agreed directions or, if not agreed, suggested directions from each party;
- (l) whether the parties consider it is a case which could be fast-tracked;
- (m) the preferred hearing venue;
- (n) updated costs estimates for experts and other legal costs to the date of the trial and which shall be sent to all parties at the same time as they are filed in Court.
- (o) proposals for ADR.

30. If the plaintiff (or petitioner or applicant) fails to file or serve the case management material by the dates specified, or fails to comply with any of the above directions, the Court may impose such sanction as it sees fit and either proceed with or adjourn the Case Management Conference.

31. At the Case Management Conference, the Court will:

- (a) settle a list of issues;
- (b) fix the pre-trial timetable;
- (c) consider the question of alternative dispute resolution (ADR);
- (d) consider the question of discovery (including any agreement on nature, scope, the use of electronic discovery and the timetabling of discovery);
- (e) consider the question of expert evidence and ensure its compliance with Practice Direction 1 of 2015 (Expert Evidence).⁶
- (f) consider the question of factual evidence including whether or not witness statements should be provided;
- (g) consider whether the case lends itself to the hearing of any preliminary issues;
- (h) look at the issues of costs, legal and expert, to include costs estimates;

⁶ Appendix D.

- (i) fix a date for the Pre-Trial Review, which will typically be between four and eight weeks before the date fixed for trial;
- (j) decide if there should be a written opening or a written response.
- (k) fix the trial date.

32. With a view to determining whether a case should be fast-tracked⁷ or prioritised within the Hub, the Court will identify whether the case would benefit from limited or no discovery (as in paragraph 24 (i) - (iii) herein), the absence of or limited interlocutory applications, time limited oral evidence, concise written submissions on the key issue(s) and/or a guaranteed short hearing.

33. The Court will consider whether it is appropriate to separate liability and quantum in each case. If the case is identified as one which lends itself to the hearing of a preliminary issue, the Court may, at her or his discretion give directions for the hearing of such an issue or list the case for a further Case Management Conference to agree further directions and the appropriate preliminary question/issue to be decided upon.

34. There should be no requirement for reviews between the Case Management Conference and the Pre-Trial Review. However, the parties are at liberty to contact the court in writing, to request provision for any necessary interlocutory applications and/or a further Case Management hearing if the Court's directions have not been complied with, or if there is a risk that they will not be complied with. It is at the discretion of the Court as to whether these matters can be dealt with on paper or require a hearing before the Master or the Judge.

35. Case Management Conferences are generally to be listed on Fridays and will be allotted such time as is required to explore all the issues.

Pre-Trial Review

36. The purpose of the Pre-Trial Review is to allow the Court to ensure that the case is ready to be heard and fix the logistical arrangements for trial, including lists of witnesses, order of witnesses, provision of witness statements, and use of technology.

⁷ Review of Civil and Family Justice in Northern Ireland, Review Group's Report on Civil Justice: CJ161

37. Not less than seven days before the pre-trial review, the plaintiff shall, **by noon**, send to the Commercial Judge and copy to the defendant, the following list, confirming that:

- (i) Pleadings are in order.
- (ii) Discovery has been made in accordance with the Court's directions.
- (iii) There are no outstanding interlocutory applications;
- (iv) In accordance with Practice Direction 1 of 2015, expert evidence is agreed and filed in accordance with the Court's directions. All expert evidence has been exchanged. There is an agreement that the expert evidence should be heard either sequentially or concurrently. The experts have met and minutes have been agreed and filed in Court.⁸
- (v) An up to date uncontentious case summary has been filed;
- (vi) An up to date list of facts, agreed and disputed, has been filed;
- (vii) An up to date list of outstanding issues has been filed;
- (viii) Written statements, if directed, are available;
- (ix) An agreed chronology has been filed;
- (x) Witness subpoenas have been served and/or the attendance of witnesses is confirmed;
- (xi) Confirmation that the timetable remains as per the Case Management Conference.

38. In the event that all the parties are agreed that the above matters are in order, the Commercial Judge may dispense with the need for a Pre-Trial Review.

39. If a Pre-Trial Review is required, the Court will ensure that case management directions have been complied with and give any further directions for the trial that are necessary.

40. Counsel representing the parties at the trial should be in attendance at the Pre-Trial Review.

41. At the Pre-Trial Review, the Court sets the timetable for the trial unless this has already been done or unless the Court considers that it would be inappropriate

⁸ Appendix D herein.

to do so, or appropriate to do so at a later time. Skeleton arguments and trial bundles will be filed in accordance with Practice Direction 6/2011⁹ and the Court will require these to be available in hard copy and electronic format, unless it gives specific authorisation to the contrary.

42. A core bundle should be available four weeks before the date of the trial so that it can be referenced in the skeleton arguments of both sides. It should only contain the **essential documents necessary to resolve the issues** in the case. By way of illustration, the Core Bundle might include 4 key liability documents, 2 essential quantum documents, the skeleton arguments, the minutes of the experts' meeting and an essential legal authority or extract.

If non-essential documents are included, then any costs arising from the inclusion of these documents are likely to be ordered to be paid by the party responsible for their inclusion, regardless of the outcome of the proceedings.

43. Trial bundle 1 should comprise all the key documents including:

- (i) Pleadings;
- (ii) Skeleton arguments;
- (iii) Written opening and response, if directed;
- (iv) Uncontentious case summary and list of issues; as per paragraph 31 above;
- (v) List of relevant facts, agreed or in dispute;
- (vi) Updated breakdown of expected legal and experts' costs to the date of the trial;
- (vii) Written statements of witnesses, if directed;
- (viii) Agreed chronology.
- (ix) Written opening and written response, if directed.

44. Trial bundle 2 and following (TB2A etc) should include the experts' reports and exhibits with pages numbered sequentially and indexed.

45. All other bundles (numbered TB3 and sequentially thereafter) should be prepared as follows:

⁹ Appendix E herein.

- (i) There should be only **one copy** of any document, unless there is a good reason to do otherwise;
- (ii) Documents and correspondence should be in chronological order;
- (iii) A contract or other documents essential to the case made by either party may be included additionally at a separate tab;
- (iv) Manuscript documents and those which are not fully legible should be transcribed;
- (v) Documents should be printed on one side only;
- (vi) Bundles should not contain more than 300 single sided sheets;
- (vii) Bundles should be paginated running from 1 sequentially to the final page of that bundle;
- (viii) Bundles should be indexed, but it will not be necessary to index a chronological bundle of contemporaneous documents;
- (ix) Bundles should be numbered and named on the outside spine and inside front cover, TB3, TB4 etc..
- (x) Dividers or tabs may assist in the organisation of a bundle;
- (xi) Large documents should be placed in an easily accessible separate file;
- (xii) There should be an agreed bundle of authorities which should include **a small number of key cases** which a judge will need to read in full before the trial. These will be asterisked;
- (xiii) The other authorities should have the sections marked or highlighted which the judge should read before the trial. The parties should proceed on the basis that in the preparation of bundles of authorities less is more;
- (xiv) The costs of copying legal authorities which are not relied upon and which are mere surplusage are unlikely to be recovered from the other side;
- (xvi) The bundle(s) of authorities should be numbered sequentially and should be available, at the latest two weeks before the trial so cases can be referenced in the plaintiff's skeleton argument.

46. All trial bundles should be produced at least 2 weeks before the trial commences.

47. The Commercial Judge will endeavour to produce a judgment as soon as possible after the conclusion of the case. Accordingly any judgment should normally be available within 6 weeks after the conclusion of a case although more complex cases may take longer.

Mr Justice Horner

Judge of the Commercial Court

29 April 2019