

## **PRACTICE DIRECTION 51N – SHORTER AND FLEXIBLE TRIALS PILOT SCHEMES**

### **This Practice Direction supplements various rules.**

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### **General**

**1.1** This Practice Direction is made under rule 51.2. It provides for a pilot of two schemes, the Shorter Trials Scheme and the Flexible Trials Scheme.

**1.2** The pilot for both schemes is to –

(a) operate from 1 October 2015 for three years to 30 September 2018;

(b) operate in the courts situated in the Royal Courts of Justice, Rolls Building, Fetter Lane, London that is the Chancery Division (including the Patents Court and the Companies Court), the Commercial Court, the London Mercantile Court and the Technology and Construction Court (“the Rolls Building courts”);

(c) apply to claims issued on or after 1 October 2015;

(d) will continue to apply after 30 September 2018 to any claim issued or transferred into the schemes while the relevant scheme is in force.

**1.3** For the purposes of the pilot where the provisions of this Practice Direction conflict with other provisions of the rules or other practice Directions, this Practice Direction shall take precedence.

**1.4** In calculating the time provided by any order fixing, extending or abridging time under the Shorter Trials Scheme the period from 24 December to 2 January next following (both days inclusive) is excluded.

**1.5** Where a case is agreed or ordered to be suitable for the Shorter Trials Scheme, the court expects the parties and their representatives to cooperate with, and assist, the court in ensuring the proceeding is conducted in accordance with the Scheme so that the real issues in dispute are identified as early as possible and are dealt with in the most efficient way possible.

### **The Shorter Trials Scheme**

#### ***Shorter Trials Scheme – general***

**2.1** A claim in the Shorter Trials Scheme may be started in any of the Rolls Building courts.

**2.2** The Shorter Trials Scheme is for all cases in the Admiralty and Commercial Court, the London Mercantile Court, the Technology and Construction Court, and the Patents Court and for business cases in the Chancery Division.

**2.3** The Shorter Trials Scheme will not normally be suitable for –

(a) cases including an allegation of fraud or dishonesty;

(b) cases which are likely to require extensive disclosure and/or reliance upon extensive witness or expert evidence;

(c) cases involving multiple issues and multiple parties, save for Part 20 counterclaims for revocation of an intellectual property right;

(d) cases in the Intellectual Property Enterprise Court;

(e) public procurement cases.

**2.4** The length of trials in the Shorter Trials Scheme will be no more than 4 days including reading time (and a case will not be suitable for the Scheme if it appears that it will require a longer trial).

**2.5** All Shorter Trials Scheme claims will be allocated to a designated judge at the time of the first case management conference (CMC) or earlier if necessary.

**2.6** All proceedings in the Shorter Trials Scheme will normally be heard or determined by the designated judge except that –

(a) another judge may hear urgent or vacation applications if the designated judge is not available;

(b) unless the court otherwise orders, any application relating to the enforcement of a judgment or order for the payment of money will be dealt with by a Master of the Queen's Bench Division or of the Chancery Division or a District Judge;

(c) a case may be tried by a Master in the Chancery Division with the consent of the parties.

**2.7** Provisions in other rules or practice directions which refer to a Master or District Judge are to be read, in relation to claims in the Shorter Trials Scheme, as if they referred to a judge.

### ***Starting proceedings in the Shorter Trials Scheme***

**2.8** Claims in the Shorter Trials Scheme must be issued in the appropriate registry in the Rolls Building that is to say the Chancery Registry, the Admiralty and Commercial Registry, and the Technology and Construction Court Registry.

**2.9** As appropriate, the claim form must be marked in the top right hand corner as follows –

(a) “Queen's Bench Division, Commercial Court, Shorter Trials Scheme”;

(b) “Chancery Division, Shorter Trials Scheme”, “Chancery Division, Companies Court, Shorter Trials Scheme”, “Chancery Division, Patents Court, Shorter Trials Scheme” as appropriate;

(c) “Queen’s Bench Division, Technology and Construction Court, Shorter Trials Scheme”;

(d) “Queen’s Bench Division, The London Mercantile Court, Shorter Trials Scheme”.

### ***Transferring proceedings to or from the Shorter Trials Scheme***

**2.10** An application by a defendant, including a Part 20 defendant, for an order transferring proceedings out of the Shorter Trials Scheme should be made promptly and normally not later than the first CMC. An application may be made on paper prior to the first CMC if appropriate.

**2.11** If a successful application is made to transfer a case out of the Shorter Trials Scheme, the case will then proceed in the court in which it was issued unless a judge otherwise orders.

**2.12** An application to transfer a case into the Shorter Trials Scheme must be heard by a judge, save that in the Chancery Division it may be heard by a Master. If a judge or Master orders a case to be transferred into the Shorter Trials Scheme, he may give case management directions.

**2.13** An application by any party for an order transferring proceedings into the Shorter Trials Scheme should be made promptly and normally not later than the first CMC.

**2.14** The court may, of its own initiative, suggest that a case be transferred into the Shorter Trials Scheme.

**2.15** In deciding whether to transfer a case into or out of the Shorter Trials Scheme, without prejudice to the generality of the overriding objective, the court will have regard to the type of case the Scheme is for, the suitability of the case to be a part of the Scheme and the wishes of the parties.

**2.15A** If a case is transferred into the Shorter Trials Scheme, the court will consider whether it is necessary to require that Statements of Case which have already been served should be amended to put them in the form they would have been in had the case commenced in the scheme. Statements of Case which have already been served will not normally need to be amended.

### ***Proceedings in the Shorter Trials Scheme***

**2.16** The procedure set out in this paragraph shall be substituted for any applicable pre-action protocols.

**2.17** Save where there is good reason not to do so, as in a case of urgency, a letter of claim should be sent giving succinct but sufficient details of the claim to enable the potential defendant to understand and to investigate the allegations.

**2.18** The letter of claim shall notify the proposed defendant of the intention to adopt the Shorter Trials Scheme procedure.

**2.19** The proposed defendant shall respond within 14 days stating whether it agrees to or opposes that procedure, or whether it has insufficient information to commit itself either way.

**2.20** Particulars of claim must be served with the claim form.

**2.21** In addition to the requirements of rule 16.4, the particulars of claim should include –

- (a) a brief summary of the dispute and identification of the anticipated issues;
- (b) a full statement of all relief or remedies claimed;
- (c) detailed calculations of any sums claimed.

**2.22** The particulars of claim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.

**2.23** The particulars of claim should be accompanied by a bundle of core documents.

**2.24** The claim form and particulars of claim shall be served promptly following –

- (a) the 14 day period allowed for the defendant's response to the letter of claim; or
- (b) the defendant's response, if a longer period for response is agreed between the parties.

**2.25** The claimant shall, promptly after serving the claim form and particulars of claim, take steps to fix a CMC for a date approximately (but not less than) twelve weeks after the defendant is due to acknowledge service of the claim form.

**2.26** The defendant shall be required to file an acknowledgment of service within the time periods prescribed by the rules.

**2.27** If the defendant files an acknowledgment of service stating that he wishes to dispute the court's jurisdiction, the period for serving and filing a defence is 28 days after filing of the acknowledgment of service (unless an application to challenge the jurisdiction is made on or before that date, in which case no defence need be served before the hearing of the application: see rules 11(7) and (9)).

**2.28** In cases where the jurisdiction of the court is challenged these provisions will not apply until the question of the court's jurisdiction has been resolved.

**2.29** The defence and any counterclaim must be served within 28 days of acknowledgment of service of the claim form.

**2.30** The defence should include –

- (a) a statement indicating whether it is agreed that the case is appropriate for the Shorter Trials Scheme and, if not, why not;

(b) a summary of the dispute and identification of the anticipated issues (if different to that of the claimant).

**2.31** The defence and counterclaim should be no more than 20 pages in length. The court will only exceptionally give permission for a longer statement of case to be served for use in the Shorter Trials Scheme and will do so only where a party shows good reasons.

**2.32** The defence should be accompanied by a bundle of any additional core documents on which the defendant intends to rely.

**2.33** Unless such extension would require alteration of the date for the CMC, if it has already been fixed, the defendant and the claimant may agree that the period for serving and filing a defence shall be extended by up to 14 days. However, any such agreement and brief reasons must be evidenced in writing and notified to the court.

**2.34** Any reply and defence to counterclaim must be served within 14 days thereafter.

### ***Case Management Conference***

**2.35** If the suitability of the Shorter Trials Scheme procedure is disputed then that issue will be determined at the first CMC, if not before, and further directions given in the light of that determination.

**2.36** The legal representatives for the claimant will be responsible for producing and filing a list of issues, and where appropriate for revising it.

**2.37** The claimant's legal representatives shall provide a draft list of issues to the defendant's solicitors in sufficient time to enable the parties to use their best endeavours to discuss and agree the contents thereof prior to filing the CMC bundle at court.

**2.38** At the CMC the court will –

(a) review the issues;

(b) approve a list of issues;

(c) consider ADR;

(d) give directions for trial;

(e) fix a trial date (or window), which should be not more than 8 months after the CMC and with a trial length of not more than 4 days (including reading time);

(f) fix a date for a Pre-Trial Review.

### ***Disclosure***

**2.39** Rules 31.5(2) and 31.7 do not apply.

**2.40** If and insofar as any party wishes to seek disclosure from another party of particular documents or classes of documents or of documents relating to a particular issue, they must write to the other party to make such requests not less than 14 days in advance of the CMC and, absent an agreement regarding the extent of the disclosure to be given, raise such requests at the CMC.

**2.41** Where there is a dispute as to whether requested disclosure should be provided, in deciding whether it is necessary so to order the court will have regard to how narrow and specific the request is, whether the requested documents are likely to be of significant probative value and the reasonableness and proportionality of any related search required, having regard to the factors set out in rule 31.7(2).

**2.42** Unless agreed by the parties or otherwise ordered at the CMC, the following provisions for disclosure will apply –

(a) the parties shall, within 4 weeks of the CMC, make and serve a disclosure list in accordance with rule 31.10 and serve copies of all documents in the list, inspection of which is not objected to;

(b) the documents to be listed in the disclosure list are –

(i) the documents on which they rely as supporting their case;

(ii) the documents requested by the other party under paragraph 2.40 above that it agreed to produce or was ordered to produce by the court;

(c) each party must also provide a disclosure statement containing a brief description of the steps the party has taken to locate the document agreed or ordered to be disclosed.

**2.43** Applications for specific disclosure and further information made after the CMC are discouraged under the Shorter Trials Scheme and should not be made without good reason.

### ***Witness statements***

**2.44** Unless otherwise ordered, witness statements will stand as the evidence in chief of the witness at trial. No witness statements should without good reason be more than 25 pages in length.

**2.45** The court will consider at the CMC whether to order that witness evidence shall be limited to identified issues or to identified topics.

### ***Experts***

**2.46** Expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the CMC or as subsequently agreed by the parties or directed by the court.

### ***Applications***

**2.47** Part 23 applies with the modifications set out in this paragraph.

**2.48** The court will deal with all applications (save for the CMC and pre-trial review) without a hearing in accordance with the following directions–

(a) all applications and documents filed in support must be concise;

(b) the respondent must answer in writing within 7 days of service of the application notice. The response must be concise;

(c) any reply from the applicant must be provided within 2 business days of service of the response and be concise;

(d) if any party contends the application should be dealt with at a hearing, they must give an explanation in writing;

(e) The court will deal with an application without a hearing unless the court considers it necessary to hold a hearing. In appropriate cases that may be a hearing by telephone.

**2.49** Save as otherwise provided herein the periods set by this Practice Direction and any other time limits applicable to a case in the Shorter Trials Scheme under any rule, practice direction or order of the court may be extended by agreement by up to 7 days. In all other cases, such time limits may only be extended beyond 7 days by order of the court and for good reason.

**2.50** Save in exceptional circumstances, the court will not permit a party to submit material at trial in addition to that permitted at the CMC or by later court order.

### ***Pre-Trial Review***

**2.51** At the Pre-Trial Review the court will review the case and will fix the timetable for the trial, including time for speeches and for cross-examination.

### ***The Trial***

**2.52** The judge hearing the trial will be the designated judge unless it is impractical for that judge to do so.

**2.53** The court will manage the trial to ensure that, save in exceptional circumstances, the trial estimate is adhered to. Cross-examination will be strictly controlled by the court.

**2.54** The trial will be conducted on the basis that it is only necessary for a party to put the principal parts of its case to a witness, unless the court directs otherwise.

**2.55** The court will endeavour to hand down judgment within six weeks of the trial or (if later) final written submissions.

### ***Costs***

**2.56** Rule 3.12 shall not apply to cases in the Shorter Trials Scheme, unless the parties otherwise agree. If at the outset of the proceedings the parties agree that Costs Management should apply, they should seek an order to that effect at the CMC and apply for directions as to when budgets should be subsequently exchanged, discussed and submitted for the court's approval.

**2.57** Within 21 days of the conclusion of the trial, or within such other period as may be ordered by the court, the parties shall each file and simultaneously exchange schedules of their costs incurred in the proceedings.

**2.58** Such schedules should contain sufficient detail of the costs incurred in relation to each applicable phase identified by Precedent H to the Costs Budgeting regime to enable the trial judge to be in a position to make a summary assessment thereof following judgment.

**2.59** Save in exceptional circumstances –

- (a) the court will make a summary assessment of the costs of the party in whose favour any order for costs is made;
- (b) rules 44.2(8), 44.7(1)(b) and Part 47 do not apply.

### ***Appeals***

**2.60** The Court of Appeal will seek to take into account the fact that a case was in the Shorter Trials Scheme and the desire for expedition in deciding when applications for permission to appeal will be considered and when appeals will be listed.

## **The Flexible Trials Scheme**

### ***Flexible Trials Scheme – general***

**3.1** The Flexible Trials Scheme applies to a claim started in any of the Rolls Building Courts.

**3.2** The Flexible Trials Scheme 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.

**3.3** The Flexible Trials Scheme 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.

**3.4** The Flexible Trials Scheme enables the parties to agree to invite the court to determine identified issues on the basis of written evidence and submissions. In such a case, whilst the court will seek to comply with the parties' request, it may call for oral evidence to be given or oral submissions to be made on any of the identified issues if it considers it necessary to do so. Where an issue is to be determined in writing it is not necessary for a party to put its case on that issue to the other party's witnesses.

**3.5** The Flexible Trials Scheme provides a standard trial procedure as set out in paragraph 3.9 below, the Flexible Trials Procedure. This may be varied by agreement between the parties.

### ***Adoption of the Flexible Trials Scheme***

**3.6** If the parties wish to adopt the Flexible Trials Scheme they should agree to do so in advance of the first CMC and inform the court accordingly.

**3.7** If the parties wish to adopt a variation of the Flexible Trials Procedure such variations should be agreed in advance of the first CMC and the court informed accordingly.

**3.8** Unless there is good reason to order otherwise, where the parties have adopted the Flexible Trials Scheme the court will give directions in accordance with Flexible Trials Procedure and any agreed variations of it.

### ***Flexible Trials Procedure***

**3.9** Unless otherwise ordered, the following directions apply where the Flexible Trials Scheme is adopted –

(a) each party will be required to disclose the documents on which he relies and documents which are actually known to fall within rules 31.6(b) or (c) without the need for a search. At the same time the party may request specific disclosure of documents it requires from any other party. If the parties wish to agree that there be wider disclosure in accordance with rule 31.5(7)(a) to (f) they should seek to do so in relation to limited and defined issues;

(b) where there is a dispute as to whether specific disclosure should be provided in deciding whether it is necessary so to order the court will have regard to how narrow and specific the request is, whether the requested documents are likely to be of significant probative value and the reasonableness and proportionality of any related search required, having regard to the factors set out in rule 31.7(2). A party is only required to carry out a reasonable search and to provide a disclosure statement pursuant to rule 31.7 in relation to specific disclosure which it has agreed or been ordered to provide;

(c) witness evidence at trial will be given by written statements and oral evidence shall be limited to identified issues or identified witnesses, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(d) expert evidence at trial will be given by written reports and oral evidence shall be limited to identified issues, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(e) submissions at trial will be made in writing with oral submissions and cross examination subject to a time limit, as directed at the CMC or as subsequently agreed by the parties or directed by the court;

(f) where an issue is to be determined at trial on the basis of written evidence it is not necessary for a party to put its case on that issue to the other party's witnesses. Where an issue is to be determined on the basis of oral evidence it is only necessary for a party to put the principal parts of its case to the other party's witnesses, unless the court directs otherwise.

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