

SHORTER AND FLEXIBLE TRIALS PILOT SCHEME

Two new schemes are being piloted in some courts in London which are aimed at dealing with cases quickly and cost-effectively.

WHAT ARE THE SCHEMES AND WHICH COURTS ARE USING THEM?

The **Shorter Trials Scheme** is aimed at cases which will take no longer than four days at trial. It has a number of procedural innovations from pre-action to trial which should offer lower and more predictable costs and result in a quicker judgment.

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.

Cases must (or will) be proceeding in one of the courts situated in the Rolls Building in the Royal Courts of Justice in London, namely 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 SHORTER TRIALS SCHEME

What cases are not suitable for this scheme

The scheme rules say that it will not normally be suitable for the following types of claims:

- those which require extensive disclosure of documents
- those which will require reliance on extensive witness or expert evidence
- those which involve allegations of fraud or dishonesty
- those which involve multiple issues or multiple parties
- those in the Intellectual Property Enterprise Court, or public procurement cases.

Expedited timetable for pre-action correspondence and statements of case limited in length

There is an expedited timetable, limits on the length of statements of case and requirements to identify key documents, issues and loss calculations, which should lead to a focus on key issues at an early stage with the minimum of time and expense.

The claim letter only has to give “succinct but sufficient” details of the claim to allow the potential defendant to understand and investigate the allegations. It must also state the intention to use the shorter trials scheme. The defendant must respond to the claim letter within 14 days. The claimant

must serve proceedings promptly after the defendant's response (or the time for this has expired). (Note that existing proceedings can be transferred into the scheme, if they were issued on or after 1 October 2015).

The claimant must serve the particulars of claim on the defendant at the same time as the claim form, instead of the usual option to serve them later. There is a restriction on how long the particulars of claim can be - no more than 20 pages. The particulars of claim must also be accompanied by a bundle of core documents; contain a brief summary of the dispute; identify the anticipated issues; contain a full statement of the relief or remedies claimed; and contain detailed calculations of any sums claimed.

The defendant is required to file its acknowledgment of service 14 days after service on it of the claim form and particulars of claim. It then has 28 days after that to serve its defence - the claimant can agree an extra 14 days for service of the defence if it means that the case management conference date does not have to be altered (as to which, see below), but the parties will need to notify the court and give brief reasons for the extra time.

The defence also cannot be longer than 20 pages, and be accompanied by a bundle of any additional core documents that the defendant wants to include. The defence must also contain a statement as to whether the defendant agrees that the case is appropriate for the shorter trials scheme, and if not, why not; a summary of the dispute; and an identification of the anticipated issues (if different to the claimant's).

If the claimant wants to serve any reply and/or defence to counterclaim, it must do so within 14 days of the defence.

Tight case management by a designated judge aiming at judgment within a year of issue

The management of the case within an expedited timetable by a designated judge should mean the claim is dealt with consistently with the minimum of time and expense.

Straight after the claim form and particulars of claim have been served, the claimant must fix a court hearing called a case management conference (CMC), to take place 12 weeks after the defendant is due to serve its acknowledgement of service. The court will allocate the claim to a designated judge to hear the CMC and all subsequent proceedings in the claim including the trial itself (unless it is impractical for that judge to do the trial).

At the CMC, the court will:

- review and approve a list of issues
- consider alternative dispute resolution (ADR)
- give directions for trial (the steps required to get the case ready for trial)
- fix a trial date or trial window not more than eight months after the CMC, with the trial to last a maximum of four days (including reading time)

- fix a date for a Pre-trial review (PTR), where the court will review the case and fix the trial timetable including time for speeches and cross examination.

To keep directions on track, the parties will only be able to agree extensions of time of up to seven days for the steps required under court timetable - beyond that they will need to get a court order.

Limited disclosure

Disclosure is where each party states what documents exist or had existed that may be relevant to the matters in issue in the case. Under the usual court rules, whilst a court can make an order for limited disclosure, the normal direction is for “standard disclosure”, which is where a party has to disclose those documents upon which it relies, or which adversely affect its case, or which support or adversely affect the other party’s case. In practice, particularly with the volume of electronic documents now produced, this can be a very time-consuming and expensive step in the proceedings.

Under the shorter trials scheme, the usual disclosure rules do not apply. If a party wants disclosure of any particular documents or classes of documents relating to a particular issue from the other side, it must write requesting them not less than 14 days before the CMC, and if the other side do not agree then it can be raised at the CMC. The scheme rules state that applications for specific disclosure of documents are discouraged and should not be made without good reason.

Within four weeks of the CMC, the parties must then make and serve a disclosure list containing those documents on which they rely and the documents requested by the other side that it either agreed to produce or was ordered by the court to produce.

Limited length of witness statements

Witness statements cannot be longer than 25 pages without good reason

Limited oral expert evidence at trial

Expert evidence is to be given at trial by written report. Oral expert evidence can be given at trial but it must be limited to identified issues as directed at CMC, or as subsequently agreed by parties, or as directed by the court.

Limited interlocutory applications

In order to help keep to the timetable and keep costs to a minimum, all applications (except CMC’s and PTR’s) will be dealt with on paper only - if a court hearing is wanted an explanation must be given in writing. Applications and supporting documents must be concise. The respondent has seven days to respond to application notices, and the appellant has two business days to reply.

Trial timetable strictly controlled

Save in exceptional circumstances, the trial estimate will be adhered to and the court will strictly control cross-examination. Parties must only put the principal parts of its case to a witness. The court will endeavour to hand down judgment within six weeks of trial or later final written submissions.

Quicker assessment of costs

The usual rules requiring parties to file and serve costs budgets giving details of its incurred and future costs at the CMC stage will not apply (unless the parties agree that they want them to). Instead, within 21 days of the conclusion of the trial, the parties must file and serve schedules of costs containing sufficient detail of the costs incurred for each phase of the litigation, to enable the judge to make a summary assessment of costs. This means the trial judge will not only decide the liability for costs, but the actual amount, and the costs will be payable within 14 days. This should mean that disputes about costs will be resolved more quickly and cheaply.

THE FLEXIBLE TRIALS SCHEME

The aim of this scheme is to encourage parties to limit disclosure, and to confine oral evidence at trial to the minimum necessary. Unlike the Shorter Trials Scheme, both parties have to agree to use this scheme.

The parties can use the scheme's standard trial procedure provided for in the rules, or use it subject to agreed variations. They need to tell the court of their proposals before the first CMC.

Determination of issues without oral evidence

The parties can ask the court to determine identified issues on the basis of written evidence and submissions only. The court will try to do so, although it may call for oral evidence to be given or oral submissions to be made on any of those issues if it considers it necessary.

Disclosure

Under the scheme's standard trial procedure, the search that the parties have to undertake for documents is limited. The parties must disclose:

- documents on which it relies; and
- documents which are actually known to fall within the following categories without the need for a search:
 - those which adversely affect its own case;
 - those which adversely affect another party's case;
 - those which or support another party's case; and
 - those documents the party is required to disclose by a relevant court practice direction.

The removal of the need to search for documents which might fall within those categories but of which the party is unaware should significantly reduce the scope of the usual search for disclosure documents.

At the same time, the parties may request specific disclosure of documents it requires from any other party. If there is any dispute about this, the court will consider, when deciding whether to make an order for specific disclosure, 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.

If the parties agree that there should be wider disclosure than this, they should seek to do so only in relation to limited and defined issues.

Witness evidence

Witness evidence at trial will be given by written statements - oral evidence is limited to identified issues or identified witnesses, as directed at the CMC or as subsequently agreed by the parties or directed by the court.

Expert evidence

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

Trial

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. If an issue is to be determined on the basis of oral evidence, the party should only put the principal parts of its case to the other party's witnesses.

MORE INFORMATION

If you would like more information on the new schemes, please contact Richard King, Michael Frisby or your usual contact at the firm.

The information contained in this article is designed to provide a general introductory summary of the subject matters covered. It does not purport to be exhaustive or to provide legal advice, nor should it be used as a substitute for such advice.