

PRACTICE DIRECTION - TECHNOLOGY AND CONSTRUCTION COURT

**THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 49
AND REPLACES, WITH MODIFICATIONS, ORDER 36 OF THE
RULES OF THE SUPREME COURT**

GENERAL

- 1.1 This practice direction applies to cases allocated to the Technology and Construction Court (“the TCC”).
- 1.2 A TCC claim is a claim which involves issues or questions which are technically complex or for which a trial by a judge of the TCC is for any other reason desirable.
- 1.3 TCC claims may be dealt with either in the High Court or, subject to paragraph 2.3 below, in a county court but cases allocated to the TCC will, unless and until a judge of the TCC otherwise directs, be dealt with by a judge of the TCC.
- 1.4 A judge will be appointed to be the judge in charge of the TCC (currently Mr Justice Dyson).

COMMENCEMENT OF PROCEEDINGS

- 2.1 Before the issue of a claim form relating to a TCC claim, the claim form, whether to be issued in the High Court or in a county court, should, if it is intended that the case be allocated to the TCC, be marked in the top right hand corner “Technology and Construction Court”. The case will then be allocated to the TCC. The words “Technology and Construction Court” should follow the reference to “The ___ County Court” or “The High Court, Queen’s Bench Division”, as the case may be.
- 2.2 The TCC is a specialist list for the purposes of CPR Part 30 (Transfer) but no order for the transfer of proceedings from or to the TCC shall be made unless the parties have either:
 - (1) had an opportunity of being heard on the issue, or
 - (2) consented to the order.
- 2.3 A claim form marked as mentioned in paragraph 2.1 may not be issued in a county court office other than:
 - (1) a County Court office where there is also a High Court District Registry; or
 - (2) the office of the Central London County Court.

- 2.4 Where a claim form marked as mentioned in paragraph 2.1 is issued in the Royal Courts of Justice, the case will be assigned to a named TCC judge (the “assigned judge”) who will have the primary responsibility for the case management of that case. All documents relating to that case should be marked, under the words “Technology and Construction Court” in the title, with the name of the assigned judge.

APPLICATIONS

- 3.1 Where a claim form is to be marked as mentioned in paragraph 2.1, any application before issue of the claim form should be made to a judge of the TCC.
- 3.2 If an application is made before the issue of the claim form, the written evidence in support of the application must state, in addition to any other necessary matters, that the claimant intends to mark the claim form in accordance with paragraph 2.1.
- 3.3 Any application in a case which has been allocated to the TCC must be made to a judge of the TCC.
- 3.4 Where there is an assigned judge of a TCC case, any application in that case should be made to the assigned judge but, if the judge in charge of the TCC so authorises or if the assigned judge is not available, may be made to another judge of the TCC.
- 3.5 If an application is urgent and no TCC judge is available to deal with it, the application may be made to any judge who, if the case were not allocated to the TCC, would be authorised to deal with the application.

CASE MANAGEMENT

- 4.1 Every claim allocated to the TCC will be allocated to the multi-track and the CPR relating to track allocation will not apply.
- 4.2 Where a claim has been allocated to the TCC either on issue (i.e. in every case in which the claim form has been marked “Technology and Construction Court”) or by transfer to the TCC, an application for directions (including an application for a fixed date of hearing) must be made by the claimant within 14 days of the filing by the defendant of an acknowledgement of service or of a defence (whichever is the earlier) or, as the case may be, within 14 days of the date of the order of transfer.
- 4.3 If the claimant does not make an application in accordance with paragraph 4.2-
- (1) any other party may do so or may apply for the claim of the claimant in default to be struck out or dismissed; or
 - (2) a TCC judge may on his own initiative fix a directions hearing.

- 4.4 The provisions of CPR Part 29 and the practice direction supplementing that Part apply to the case management of TCC cases except where inconsistent with this or any other TCC practice direction. But reference in those provisions to a listing questionnaire shall be read as references to a pre-trial review questionnaire and paragraphs 8 and 9 of the practice direction do not apply. Attention is drawn, in particular, to the following provisions of CPR Part 29 and the supplementing practice direction:

CPR Part 29

- rule 29.3(2) (attendance of legal representatives)
- rule 29.4 (agreed proposals)
- rule 29.5 (variation of case management timetable)
- rule 29.6 (pre-trial review (listing) questionnaire)

Practice Direction supplementing CPR Part 29

- paragraphs 3.4 to 3.9 (general provisions)
- paragraphs 5.1 to 5.8 (case management conferences)
- paragraphs 6.1 to 6.5 (variation of directions)
- paragraphs 7.1 to 7.4 (failure to comply with case management directions)
- paragraphs 10.1 to 10.6 (the trial)

CASE MANAGEMENT CONFERENCE

- 5.1 The first case management conference will take place at the directions hearing referred to in paragraphs 4.2 and 4.3 above.
- 5.2 When the court notifies the parties of the time and date of the hearing of the first case management conference it will also send them a case management questionnaire and a case management directions form. These documents will be in the forms annexed to this practice direction, and marked respectively Appendix 1 and 2.
- 5.3 The parties shall complete, exchange and return both forms by no later than 4pm two days before the date on which the case management conference is to take place. The parties are encouraged to try to agree directions by reference to the case management directions form.
- 5.4 If a party fails to exchange or return the forms by the date specified, the court may make an order which leads to the claim or defence being struck out, or impose such other sanction as it sees fit, or may hold a case management conference without the forms.
- 5.5 At the first case management conference, the court will usually fix the date for trial of the case and of any preliminary issue that it orders to be tried. It will also give case management directions. The directions will usually include the fixing of a date for a pre-trial review.
- 5.6 Whenever possible, the trial of a case will be heard by the assigned judge of that case.

PRE-TRIAL REVIEW

- 6.1 When the court fixes the date for a pre-trial review it will also provide the parties with a pre-trial review questionnaire and a pre-trial review directions form. These documents will be in the forms annexed to this practice direction marked respectively as Appendix 3 and 4.
- 6.2 The parties shall complete, exchange and return both forms no later than 4pm two days before the date on which the pre-trial review is to take place. The parties are encouraged to try to agree directions by reference to the pre-trial review directions form.
- 6.3 If a party fails to exchange or return the pre-trial review questionnaire or pre-trial review directions form by the date specified, the court may make an order which leads to the claim or defence and any counterclaim being struck out, or it may impose such other sanction as it sees fit, or it may hold a pre-trial review without the forms.
- 6.4 At the pre-trial review, the court will give such directions for the conduct of the trial as it sees fit.

THE CIVIL PROCEDURE RULES

- 7.1 The Civil Procedure Rules and the practice directions supplementing them apply to TCC cases subject to the provisions of this practice direction and any other TCC practice direction.

First Case Management Conference Questionnaire

In the County Court/ High Court
Queens's Bench Division

Technology and Construction Court

Claim No.

Last date for filing
with court office

To

Please read the notes on page five before completing the questionnaire.

Please note the date by which it must be returned and the name of the court it should be returned to since this may be different from the court where proceedings were issued.

If you have settled this case (or if you settle it on a future date) and do not need to have it heard or tried, you must let the court know immediately.

A Settlement

Do you wish there to be a stay to attempt to settle the case by negotiations or by any other form of alternative dispute resolution?

☐ Yes

☐ No

If yes, at what stage and for how long?

If no, please give reasons.

B Transfer

If you think your case is suitable for a transfer to another court or track, say which:

Court: Chancery Division/Queen's Bench Division/another TCC Court/Commercial Court/County Court
Track: Small claims/fast track

Please give brief reasons for your choice:

C Pre-Action protocols

Have you complied with any pre-action protocol applicable to your claim?

☐ None applicable to this claim ☐ Yes ☐ No

If Yes, please say which protocol:

If No, please explain to what extent and for what reason it has not been complied with:

D Applications

If you have not already sent the court an application for summary judgment, do you intend to do so?

☐ Yes ☐ No

If you have not already issued a claim in the case against someone not yet a party, do you intend to apply for the court's permission to do so?

☐ Yes ☐ No

Have you any other applications to make?

☐ Yes ☐ No

In any such case, if Yes, please give details:

E Witnesses of fact

So far as you know at this stage, what witnesses of fact do you intend to call at the hearing?

Witness name	Witness to which facts

F Experts' evidence

Do you wish to use expert evidence at the hearing?

☐ Yes ☐ No

Have you already copied any experts' report(s) to the other party(ies)?

☐ None ☐ Yes ☐ No
obtained
as yet

Please list the experts whose evidence you think you will use:

Expert's Name

Field of expertise

(eg. architect, mechanical engineer)

Will you and the other party use the same expert(s)?

☐ Yes ☐ No

If No, please explain why not:

Should any, and if so what, inspections, samples, experiments or calculations by experts be directed?

☐ Yes ☐ No

Do you want your expert(s) to give evidence orally at the hearing or trial?

☐ Yes ☐ No

If Yes, give the reasons why you think oral evidence is necessary:

G Location of trial

Is there any reason why your case needs to be heard at a particular court?

☐ Yes ☐ No

If Yes, give reasons (eg. particular facilities required, convenience of witnesses, etc.)

and specify the court:

H Representation and estimate of hearing/trial time

Do you expect to be represented by a solicitor or counsel at the hearing/trial?

☐ No ☐ Solicitor ☐ Counsel

How long do you estimate it will take to put your case to the court at the hearing/trial?

days hours minutes

How long do you estimate for the whole of the trial, excluding judgment?

days hours minutes

If there are days when you, your representative, expert or an essential witness will not be able to attend court, give details:

Name

Dates not available

I Costs (only relates to costs incurred by legal representatives)

What is your estimate of your costs incurred to date, excluding disbursements, VAT and court fees?

£

What do you estimate your overall costs are likely to be, excluding disbursements, VAT and court fees?

£

J Other Information

Have you attached documents you wish the judge to take into account when considering what directions to make?

☐ Yes ☐ No

Have they been served on the other parties?

☐ Yes ☐ No

If Yes, say when

Have the other parties agreed their content?

☐ Yes ☐ No

Have you attached a list of the directions you think appropriate for the management of your case on the case management directions form?

☐ Yes ☐ No

Are they agreed with the other parties?

☐ Yes ☐ No

Are there any other facts which might affect the timetable the court will set? If so, please state

Signed

Date

[Counsel][Solicitor][for the][Claimant][Defendant]

Notes for completing this Questionnaire

- If the case is not settled, a judge must give directions for its management. To help the judge give the most just and cost-effective directions, you must now complete the attached questionnaire.
- If you fail to return the questionnaire by the date given, the judge may make an order which leads to your claim or defence being struck out, or hold a case management conference without it. If there is a case management conference the judge may order any party who has not filed their questionnaire to pay, immediately, the costs of that hearing.
- If you wish to make an application, for example, for special directions, for summary judgment on the grounds that the other party has no reasonable chance of success in their claim or defence, or for permission to add another party to the claim, you should send it and any required fee with the completed questionnaire. If a hearing is fixed for your application, it may also be used as a case management conference.
- Any other documents you wish the judge to take into account should be filed with the questionnaire. But you must confirm that the documents have been sent to the other party, or parties, saying when they would have received them and whether they agreed their contents.
- Use a separate sheet if you need more space for your answers marking clearly which section the information refers to. Write the case number on it, sign and date it and attach it securely to the questionnaire.
- The letters below refer to the sections of the questionnaire and tell you what information is needed.

A Settlement

If you think that you and the other party may be able to negotiate a settlement you should tick the 'Yes' box. The court may order a stay, whether or not all the other parties to the case agree. Where a stay is granted it will be for an initial period which the judge will specify.

B Transfer

C Pre-action protocols

For certain kinds of claim, there are protocols which set out what ought to be done before court proceedings are issued. As at April 1999 there are protocols for clinical negligence and personal injury claims.

D Applications

If you intend to apply for summary judgment or for permission to add another party to the claim or make any application you should, if you have not already done so, file an application with your completed questionnaire.

E Witnesses of fact

Remember to include yourself, if you will be giving evidence; but not experts, who should be included in section E.

F Experts' evidence

Oral or written expert evidence will only be allowed at the trial with the court's permission. The judge will decide what permission it seems appropriate to give when the case is allocated to track.

G Location of trial

H Representation and estimate of hearing time

Appendix 2

TECHNOLOGY AND CONSTRUCTION COURT

CASE MANAGEMENT CONFERENCE DIRECTIONS FORM

CLAIM 199 TCC No . ORDER ON CASE MANAGEMENT CONFERENCE HELD 1999

() Trial: Week beginning . Estimated length days. [Directions, if appropriate, for separate trials of issues or for parties to serve and file proposals for such directions]

() This claim to be [consolidated] [managed and tried] with 19 TCC No . [This] [19 TCC No] to be lead claim. [All directions in lead claim to apply to both claims unless otherwise directed.]

() Permission to amend [see below].

() Defence and any counterclaim to be served by am/pm on 1999/20 .

() Reply to defence, if desired, and defence to any counterclaim, to be served by am/pm on 1999/20 .

() Disclosure of documents by am/pm on 1999/20 . [Standard disclosure dispensed with/limited/varied as follows:

].

() Claimant/defendant to serve a Scott Schedule [of defects and damages] [under paragraph of the particulars of claim/defence] by am/pm on 1999/20 . Column headings to be as follows: [see below].

() Defendant/claimant to respond to the Scott Schedule by am/pm on 1999/20 .

() Signed statements of witnesses of fact to be served [and filed] by am/pm on 1999/20 . [Directions, if appropriate, for control of evidence of fact under rule 32.1]

() [No expert evidence without further order] [Permission for expert evidence on the following terms: (see below)].

() [Inspections to be made/samples to be obtained/experiments to be conducted/ calculations to be carried out as follows:

].

() Experts in like fields to hold discussions in accordance with rule 35.12 by am/pm on 1999/20 on [all the issues arising in their common fields] [the following issues:

]

Statements under rule 35.12(3) to be prepared and filed by am/pm on 1999/20 .

() The parties are to consult with each other and the court with a view to arranging service and (where required) filing of statements of case, witness statements, experts' reports, disclosure lists and other documents in computer readable form as well as in hard copy. Format for court disks:

() [Time under paragraphs above not to be extended without permission.]

()

() Pre-trial Review: . Time allowed: . Parties to complete, file and serve pre-trial questionnaire, after consultation, by am/pm on 1999/20 .

() Liberty to restore. Costs in cause.

Permission to amend

The [Part 20] claimant/defendant to have permission to [re-]amend the [Part 20] particulars of claim/defence [and counterclaim]/reply to defence [and defence to counterclaim] in

accordance with the draft initialled by the Judge. Re-service [to be effected by am/
pm on 1999/20] [deemed to have been effected today]. The [Part 20] defendant/
claimant to have permission to [re-]amend the defence/reply to defence [and defence to
counterclaim] by am/pm on 1999/20 , limited to amendments
consequential upon the amendment for which permission is first given above. The [Part 20]
claimant/defendant to pay in any event the costs of and consequential upon that
amendment, or thrown away thereby [and of this application].

Scott Schedule

- Column headings:
- 1. Serial number.
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
 - 7.
 - 8.
 - 9.
 - 10.
 - 11.
 - 12.

Expert Evidence

Party (or state "Joint")	Field	Name	Date for exchange	Whether leave for oral evidence

Reports to be exchanged [and filed] by am/pm on the dates specified.

Pre-trial review Questionnaire

In the County Court/High Court
Queen's Bench Division

Technology and Construction Court

Claim No.

Last date for filing
with court office

To

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- The judge will use the information which you and the other party(ies) provide to conduct a pre-trial review.
- If you do not complete and return the questionnaire the judge may
 - make an order which leads to your statement of case (claim or defence) being struck out.
 - conduct the pre-trial review without it. You may be ordered to pay (immediately) the other parties' costs of attending.

A Directions complied with

1. Have you complied with all the previous directions given by the court?

☐ Yes

☐ No

2. If no, please explain which directions are outstanding and why.

Directions outstanding	Reasons directions outstanding

3. Are any further directions required to prepare the case for trial?

☐ Yes

☐ No

4. If yes, please explain directions required and give reasons.

*If no, go to
Section B*

Directions required	Reasons required

B Experts

1. Has the court already given permission for you to use written expert evidence?

☐ Yes

☐ No

*If no, go to
Section C*

2. If yes, please give name and field of expertise.

Name of expert	Whether joint expert <i>(please tick, if appropriate)</i>	Field of expertise

3. Have the experts held discussions as directed?

☐ Yes

☐ No

4. Have they filed statements as directed following those discussions?

☐ Yes

☐ No

5. Have the expert(s') report(s) been served and filed as ordered?

☐ Yes

☐ No

6. Has the court already given permission for the expert(s) to give oral evidence at the trial? *(If yes go to section C)*

☐ Yes

☐ No

7. If no, are you seeking that permission?

☐ Yes

☐ No

*(If no go to
section C)*

8. If yes, give your reasons for seeking permission.

9. If yes, what are the names, addresses and fields of expertise of your experts?

Expert 1	Expert 2	Expert 3	Expert 4

10. Please give details of any dates within the trial period when your expert(s) will not be available.

Name of expert	Dates not available

C Other witnesses

(If you are not calling other witnesses, go to section D)

- 1. How many other witnesses (including yourself) will be giving evidence on your behalf at the trial? (do not include experts - see section B above)**

(Give number)

- 2. What are the names and addresses of your witnesses?**

Witness 1	Witness 2	Witness 3	Witness 4

- 3. Please give details of any dates within the trial period when you or your witnesses will not be available?**

Name of witness	Dates not available

- 4. Are any of the witness statements agreed?**

☐ Yes

☐ No

(If no go to question C6)

- 5. If yes, give the name of the witness and the date of his or her statement**

Name of witness	Date of statement

- 6. Do you or any of your witnesses need any special facilities?**

☐ Yes

☐ No

(If no go to question C8)

- 7. If yes, what are they?**

- 8. Will any of your witnesses be provided with an interpreter?**

☐ Yes

☐ No

(If no go to section D)

- 9. If yes, say what type of interpreter e.g. language (stating which), deaf/blind etc.**

D Legal representation

1. Who will be presenting your case at the hearing or trial? ☐ You ☐ Solicitor ☐ Counsel

2. Please give details of any dates within the trial period when the person presenting your case will not be available.

Name	Dates not available

E Other matters

1. How long do you estimate the whole of the trial will take, excluding judgment?

Minutes	Hours	Days

2. What is the estimated number of pages of evidence to be included in the trial bundle?

(please give number)

3. Please provide a case summary and proposals (agreed if possible) for directions to be given, by reference to the pre-trial review directions form.

Signed

Claimant/defendant or Counsel/Solicitor for the claimant/defendant

Date

Appendix 4

TECHNOLOGY AND CONSTRUCTION COURT

PRE-TRIAL REVIEW DIRECTIONS FORM

() [Directions in relation to orders not yet complied with]

() Trial bundle to include [all admissible disclosed documents required by either party][documents in the following categories only:

.]

Claimant/defendant to serve proposed index of trial bundle by am/pm on 1999/20 .

Defendant/claimant to respond by am/pm on 1999/20 . Trial bundle to be agreed by am/pm on 1999/20 and filed by am/pm on 1999/20 with any witness statements and experts' reports not already filed.

() Claimant/defendant to open trial and to serve and file chronology, cast list and note of opening by am/pm on 1999/20 . [Defendant/claimant to make an opening response and to serve and file a note of it by am/pm on 1999/20 .]

() Disks (if obtainable) of statements of case, witness statements, experts' reports, trial bundle and opening notes, so far as not already filed, to be filed in format by am/pm on 1999/20 .

() [Adjourned hearing of pre-trial review, if required]

() Costs in cause.