

# PRACTICE DIRECTION – THE FAST TRACK

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 28

### GENERAL

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1.1 Attention is drawn in particular to the following Parts of the Civil Procedure Rules:

**Part 1**            The overriding objective

**Part 3**            The court's case management powers

**Part 26**          Case management – preliminary stage

**Part 31**          Disclosure and inspection of documents

**Part 32-34**      Evidence

**Part 35**          Experts and assessors

and to the practice directions which relate to those Parts.

1.2 Attention is also drawn to:

Rule 26.6(5) – which makes provision about limitations on expert evidence and the length of trial in fast track cases.

Part 46 – Fast Track Trial Costs

Rule 19.4A and the practice direction supplementing it on joining the Crown in certain cases raising Convention rights issues.

### CASE MANAGEMENT

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2.1 Case management of cases allocated to the fast track will generally be by directions given at two stages in the case:

(1) at allocation to the track, and

(2) on the filing of listing questionnaires.

2.2 The court will seek whenever possible to give directions at those stages only and to do so without the need for a hearing to take place. It will expect to do so with the co-operation of the parties.

2.3 The court will however hold a hearing to give directions whenever it appears necessary or desirable to do so, and where this happens because of the default of a party or his legal representative it will usually impose a sanction.

2.4 The court may give directions at any hearing on the application of a party or on its own initiative.

2.5 When any hearing has been fixed it is the duty of the parties to consider what directions the court should be asked to give and to make any application that may be appropriate to be dealt with at that hearing.

- 2.6 When the court fixes a hearing to give directions it will give the parties at least 3 days notice of the hearing.
- 2.7 Appendix A contains forms of directions. When making an order the court will as far as possible base its order on those forms. Agreed directions which the parties file and invite the court to make should also be based on those forms.
- 2.8 Where a party needs to apply for a direction of a kind not included in the case management timetable which has been set (for example to amend his statement of case or for further information to be given by another party) he must do so as soon as possible so as to minimise the need to change that timetable.
- 2.9 Courts will make arrangements to ensure that applications and other hearings are listed promptly to avoid delay in the conduct of cases.

## DIRECTIONS ON ALLOCATION

- 3.1 Attention is drawn to the court's duty under rule 28.2(2) to set a case management timetable and to fix a trial date or a trial period, and to the matters which are to be dealt with by directions under Rule 28.3(1).
- 3.2 The court will seek to tailor its directions to the needs of the case and the steps of which it is aware that the parties have already taken to prepare the case. In particular it will have regard to the extent to which any pre-action protocol has or (as the case may be) has not been complied with.
- 3.3 At this stage the court's first concern will be to ensure that the issues between the parties be identified and that the necessary evidence is prepared and disclosed.
- 3.4 The court may have regard to any document filed by a party with his allocation questionnaire containing further information provided that the document states either that its contents have been agreed with every other party or that it has been served on every other party and when it was served.
- 3.5 If:
  - (1) the parties have filed agreed directions for the management of the case, and
  - (2) the court considers that the proposals are suitable,
 it may approve them and give directions in the terms proposed.
- 3.6 (1) To obtain the court's approval the agreed directions must:
  - (a) set out a timetable by reference to calendar dates for the taking of steps for the preparation of the case,
  - (b) include a date or a period (the trial period) when it is proposed that the trial will take place,
  - (c) include provision about disclosure of documents, and
  - (d) include provision about both factual and expert evidence.

- (2) The latest proposed date for the trial or the end of the trial period must be not later than 30 weeks from the date the directions order is made.
- (3) The trial period must not be longer than 3 weeks.
- (4) The provision in (1)(c) above may:
  - (a) limit disclosure to standard disclosure between all parties or to less than that, and/or
  - (b) direct that disclosure will take place by the supply of copy documents without a list, but it must in that case either direct that the parties must serve a disclosure statement with the copies or record that they have agreed to disclose in that way without such a statement.
- (5) The provision in (1)(d) may be to the effect that no expert evidence is required.

3.7 Directions agreed by the parties should also where appropriate contain provisions about:

- (1) the filing of any reply or amended statement of case that may be required,
- (2) dates for the service of requests for further information under the practice direction supplementing Part 18 and questions to experts under rule 35.6 and when they are to be dealt with,
- (3) the disclosure of evidence,
- (4) the use of a single joint expert, or in cases where the use of a single expert has not been agreed the exchange and agreement of expert evidence (including whether exchange is to be simultaneous or sequential) and without prejudice discussions of the experts.

3.8 If the court does not approve the agreed directions filed by the parties but decides that it will give directions on its own initiative without a hearing, it will take them into account in deciding what directions to give.

3.9 Where the court is to give directions on its own initiative and it is not aware of any steps taken by the parties other than the service of statements of case, its general approach will be:

- (1) to give directions for the filing and service of any further information required to clarify either party's case,
- (2) to direct standard disclosure between the parties,
- (3) to direct the disclosure of witness statements by way of simultaneous exchange,
- (4) to give directions for a single joint expert unless there is good reason not to do so,
- (5) in cases where directions for a single expert are not given:
  - (a) to direct disclosure of experts' reports by way of simultaneous exchange, and

- (b) if experts' reports are not agreed, to direct a discussion between the experts for the purpose set out in rule 35.12(1) and the preparation of a report under rule 35.12(3).
- 3.10 (1) If it appears to the court that the claim is one which will be allocated to the fast track but that it cannot properly give directions on its own initiative or approve agreed directions that have been filed, the court may either:
  - (a) allocate the claim to the fast track, fix a trial date or trial period and direct that a case management hearing is to be listed and give directions at that hearing, or
  - (b) direct that an allocation hearing is to be listed and give directions at that hearing.
- (2) In either case the hearing will be listed as promptly as possible.
- 3.11 Where the court is proposing on its own initiative to make an order under rule 35.15 (which gives the court power to appoint an assessor), the court must, unless the parties have consented in writing to the order, list a directions hearing.
- 3.12 The table set out below contains a typical timetable the court may give for the preparation of the case.

Disclosure	4 weeks
Exchange of witness statements	10 weeks
Exchange of experts' reports	14 weeks
Sending of pre-trial check lists (listing questionnaires) by the court	20 weeks
Filing of completed pre-trial check lists	22 weeks
Hearing	30 weeks

These periods will run from the date of the notice of allocation.

- 3.13 (1) Where it considers that some or all of the steps in that timetable are not necessary the court may omit them and direct an earlier trial.
- (2) This may happen where the court is informed that a pre-action protocol has been complied with or that steps which it would otherwise order to be taken have already been taken.
- (3) It may also happen where an application (for example for summary judgment or for an injunction) has been heard before allocation and little or no further preparation is required. In such a case the court may dispense with the need for a pre-trial check list.

## VARIATION OF DIRECTIONS

- 4.1 This paragraph deals with the procedure to be adopted:
- (1) where a party is dissatisfied with a direction given by the court,
  - (2) where the parties agree about changes they wish made to the directions given, or
  - (3) where a party wishes to apply to vary a direction.
- 4.2
- (1) It is essential that any party who wishes to have a direction varied takes steps to do so as soon as possible.
  - (2) The court will assume for the purposes of any later application that a party who did not appeal and who made no application to vary within 14 days of service of the order containing the directions was content that they were correct in the circumstances then existing.
- 4.3
- (1) Where a party is dissatisfied with a direction given or other order made by the court he may appeal or apply to the court for it to reconsider its decision.
  - (2) He should appeal if the direction was given or the order was made at a hearing at which he was present or represented, or of which he had due notice.
  - (3) In any other case he should apply to the court to reconsider its decision.
  - (4) If an application is made for the court to reconsider its decision:
    - (a) it will usually be heard by the judge who gave the directions or another judge of the same level,
    - (b) the court will give all parties at least 3 days notice of the hearing, and
    - (c) the court may confirm its decision or make a different order.
- 4.4 Where there has been a change in the circumstances since the order was made the court may set aside or vary any direction it has given. It may do so on application or on its own initiative.
- 4.5 Where the parties agree about changes to be made to the directions given:
- (1) If rule 2.11 (variation by agreement of a date set by the court for doing any act other than those stated in the note to that rule) or rule 31.5, 31.10(8) or 31.13 (agreements about disclosure) applied the parties need not file the written agreement.
  - (2)
    - (a) In any other case the parties must apply for an order by consent.
    - (b) The parties must file a draft of the order sought and an agreed statement of the reasons why the variation is sought.
    - (c) The court may make an order in the agreed terms or in other terms without a hearing, but it may direct that a hearing is to be listed.

## **FAILURE TO COMPLY WITH CASE MANAGEMENT DIRECTIONS**

- 5.1 Where a party has failed to comply with a direction given by the court any other party may apply for an order to enforce compliance or for a sanction to be imposed or both of these.
- 5.2 The party entitled to apply for such an order must do so without delay but should first warn the other party of his intention to do so.
- 5.3 The court may take any such delay into account when it decides whether to make an order imposing a sanction or whether to grant relief from a sanction imposed by the rules or any practice direction.
- 5.4
  - (1) The court will not allow a failure to comply with directions to lead to the postponement of the trial unless the circumstances of the case are exceptional.
  - (2) If it is practicable to do so the court will exercise its powers in a manner that enables the case to come on for trial on the date or within the period previously set.
  - (3) In particular the court will assess what steps each party should take to prepare the case for trial, direct that those steps are taken in the shortest possible time and impose a sanction for non-compliance. Such a sanction may, for example, deprive a party of the right to raise or contest an issue or to rely on evidence to which the direction relates.
  - (4) Where it appears that one or more issues are or can be made ready for trial at the time fixed while others cannot, the court may direct that the trial will proceed on the issues which are or will then be ready, and order that no costs will be allowed for any later trial of the remaining issues or that those costs will be paid by the party in default.
  - (5) Where the court has no option but to postpone the trial it will do so for the shortest possible time and will give directions for the taking of the necessary steps in the meantime as rapidly as possible.
  - (6) Litigants and lawyers must be in no doubt that the court will regard the postponement of a trial as an order of last resort. The court may exercise its power to require a party as well as his legal representative to attend court at a hearing where such an order is to be sought.

## **PRE-TRIAL CHECK LISTS (LISTING QUESTIONNAIRES)**

- 6.1
  - (1) The pre-trial check list (listing questionnaire) will be in Form N170.
  - (2) Unless it has dispensed with pre-trial check lists, the court will send Forms N170 and N171 (Notice of date for return of the pre-trial check list) to each party no later than 2 weeks before the date specified in the notice of allocation or in any later direction of the court for the return of the completed check lists.
  - (3) When all the pre-trial check lists have been filed or when the time for filing them has expired the file will be placed before a judge for his directions.

- (4) Although the Rules do not require the parties to exchange copies of the check lists before they are filed they are encouraged to do so to avoid the court being given conflicting or incomplete information.

Attention is drawn to the Costs Practice Direction, Section 6, which requires a costs estimate to be filed and served at the same time as the pre-trial check list is filed.

- 6.2 Attention is drawn to rule 28.6(1) (which sets out the court's duty at the pre-trial check list stage) and to rule 28.5(3) (which sets out circumstances in which the court may decide to hold a hearing).
- 6.3 Where the judge decides to hold a hearing under rule 28.5(3) the court will fix a date which is as early as possible and the parties will be given at least 3 days' notice of the date.
- The notice of such a hearing will be in Form N153.
- 6.4 The court's general approach will be as set out in the following paragraphs. The court may however decide to make other orders, and in particular the court will take into account the steps, if any, which the parties have taken to prepare the case for trial.
- 6.5 (1) Where no party files a pre-trial check list the court will normally make an order that if no pre-trial check list is filed by any party within 3 days from service of the order the claim and any counterclaim will be struck out.
- (2) Where a party files a pre-trial check list but another party does not do so, the court normally will give directions. These will usually fix or confirm the trial date and provide for steps to be taken to prepare the case for trial.

## DIRECTIONS THE COURT WILL GIVE ON LISTING

- 7.1 Directions the court must give:
- (1) The court must confirm or fix the trial date, specify the place of trial and give a time estimate. The trial date must be fixed and the case listed on the footing that the hearing will end on the same calendar day as that on which it commenced.
- (2) The court will serve a notice of hearing on the parties at least 3 weeks before the hearing unless they agree to accept shorter notice or the court authorises shorter service under rule 28.6(2), and
- (3) The notice of hearing will be in Form N172.
- 7.2 Other directions:
- (1) The parties should seek to agree directions and may file the proposed order. The court may make an order in those terms or it may make a different order.
- (2) Agreed directions should include provision about:
- (a) evidence,

- (b) a trial timetable and time estimate,
  - (c) the preparation of a trial bundle,
  - (d) any other matter needed to prepare the case for trial.
- (3) The court will include such of these provisions as are appropriate in any order that it may make, whether or not the parties have filed agreed directions.
- (4) (a) A direction giving permission to use expert evidence will say whether it gives permission for oral evidence or reports or both and will name the experts concerned.
- (b) The court will not make a direction giving permission for an expert to give oral evidence unless it believes it is necessary in the interests of justice to do so.
- (c) Where no ‘without prejudice’ meeting or other discussion between experts has taken place the court may grant that permission conditionally on such a discussion taking place and a report being filed before the trial.
- 7.3 The principles set out in paragraph 4 of this practice direction about the variation of directions apply also to directions given at this stage.

## THE TRIAL

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- 8.1 The trial will normally take place at the court where the case is being managed, but it may be at another court if it is appropriate having regard to the needs of the parties and the availability of court resources.
- 8.2 The judge will generally have read the papers in the trial bundle and may dispense with an opening address.
- 8.3 The judge may confirm or vary any timetable given previously, or if none has been given set his own.
- 8.4 Attention is drawn to the provisions in Part 32 and the following parts of the Rules about evidence, and in particular –
- (1) to rule 32.1 (court’s power to control evidence and to restrict cross-examination), and
  - (2) to rule 32.5(2) (witness statements to stand as evidence in chief).
- 8.5 At the conclusion of the trial the judge will normally summarily assess the costs of the claim in accordance with rule 44.7 and Part 46 (fast track trial costs). Attention is drawn to the steps the practice directions about costs requires the parties to take.
- 8.6 Where a trial is not finished on the day for which it is listed the judge will normally sit on the next court day to complete it.

# APPENDIX

## FAST TRACK STANDARD DIRECTIONS

### Further Statements of Case

The [ ] must file a [ ] and serve a [ ]  
 copy on [ ] no later than [ ] .

### REQUESTS FOR FURTHER INFORMATION

Any request for clarification or further information based on another party's statement of case shall be served no later than [ ]

[Any such request shall be dealt with no later than [ ]].

### DISCLOSURE OF DOCUMENTS

[No disclosure of documents is required]

[[Each party] [The [ ] ]  
 shall give [to the [ ] ]  
 [to every other party] standard disclosure of documents [ ]  
 [relating to [ ] ]  
 by serving copies together with a disclosure statement no [ ]  
 later than [ ] ]

[Disclosure shall take place as follows:

[Each party shall give standard discovery to every other party by list]

[Disclosure is limited to [standard] [disclosure by the [ ] ] [of documents relating to damage] [ ]  
 to the [ ] ] [the following documents [ ] ]

[The latest date for delivery of the lists is [ ] ]

[The latest date for service of any request to inspect or for a copy of a document is [ ] ]

### WITNESSES OF FACT

Each party shall serve on every other party the witness statements of all witnesses of fact on whom he intends to rely.

There shall be simultaneous exchange of such statements no later than [ ]

## EXPERT EVIDENCE

[No expert evidence being necessary, no party has permission to call or rely on expert evidence].

[On it appearing to the court that expert evidence is necessary on the issue of [ ] and that that evidence should be given by the report of a single expert instructed jointly by the parties, the [ ] shall no later than [ ] inform the court whether or not such an expert has been instructed].

[The expert evidence on the issue of shall be [ ] limited to a single expert [ ] jointly instructed by the parties.

If the parties cannot agree by [ ] who that expert is to be and about the payment of his fees either party may apply for further directions.

Unless the parties agree in writing or the court orders otherwise, the fees and expenses of such an expert shall be paid to him [by the parties equally] [ ] and be limited to £ [ ] .

[The report of the expert shall be filed at the court no later than [ ]].

[No party shall be entitled to recover by way of costs from any other party more than £ [ ] for the fees or [ ] expenses of an expert].

The parties shall exchange reports setting out the substance of any expert evidence on which they intend to rely.

[The exchange shall take place simultaneously no later than [ ]].

[The [ ] shall serve his report(s) no later than the [ ] and the [ ] shall serve his reports no later than the [ ]].

[The exchange of reports relating to [causation] [ ] shall take place simultaneously no later than [ ] .

The [ ] shall serve his report(s) relating to [damage] [ ] no later than and the [ ] shall serve his reports relating to it no later than [ ]].

Reports shall be agreed if possible no later than [ ] days after service] [ ]].

[If the reports are not agreed within that time there shall be a without prejudice discussion between the relevant experts no later than [ ] to identify the [ ] issues between them and to reach agreement if possible.

The experts shall prepare for the court a statement of the issues on which they agree and on which they disagree with a summary of their reasons, and that statement shall be filed with the court [no later than \_\_\_\_\_ ] [with] [no later than the date for filing] [the pre-trial check list].

[Each party has permission to use [ \_\_\_\_\_ ] as expert witness(es) to give [oral] evidence [in the form of a \_\_\_\_\_ report] at the trial in the field of \_\_\_\_\_ provided that the substance of the evidence to be given has been disclosed as above and has not been agreed].

[Each party has permission to use in evidence \_\_\_\_\_ experts' report(s) [and the court will consider when the claim is listed for trial whether expert oral evidence will be allowed].]

## QUESTIONS TO EXPERTS

The time for service on another party of any question addressed to an expert instructed by that party is not later than \_\_\_\_\_ days after service of that expert's report.

Any such question shall be answered within \_\_\_\_\_ days of service.

## REQUESTS FOR INFORMATION ETC.

Each party shall serve any request for clarification or further information based on any document disclosed or statement served by another party no later than \_\_\_\_\_ days after disclosure or service.

Any such request shall be dealt with within \_\_\_\_\_ days of service.

## DOCUMENTS TO BE FILED WITH PRE-TRIAL CHECK LISTS

The parties must file with their listing questionnaires copies of [their experts' reports] [witness statements] [replies to requests for further information]

## DATES FOR FILING PRE-TRIAL CHECK LISTS AND THE TRIAL

Each party must file a completed pre-trial check list no later than \_\_\_\_\_ .

The trial of this case will take place [on \_\_\_\_\_ ] [on a date to be fixed between \_\_\_\_\_ and \_\_\_\_\_ ].

## DIRECTIONS FOLLOWING FILING OF PRE-TRIAL CHECK LIST

### Expert Evidence

The parties have permission to rely at the trial on expert evidence as follows:

- The claimant: Oral evidence –  
Written evidence –
- The defendant: Oral evidence –  
Written evidence –

### Trial Timetable

The time allowed for the trial is

[The timetable for the trial may be agreed by the parties, subject to the approval of the trial judge].

[The timetable for the trial (subject to the approval of the trial judge) will be that ].

[The evidence in chief for each party will be contained in witness statements and reports, the time allowed for cross-examination by the defendant is limited to and the time allowed for cross-examination by the claimant is limited to ].

[The time allowed for the claimant’s evidence is . The time allowed for the defendant’s evidence is ].

The time allowed for the submissions on behalf of each party is .

The remainder of the time allowed for the trial (being ) is reserved for the judge to consider and give the judgment and to deal with costs].

## Trial Bundle Etc.

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The claimant shall lodge an indexed bundle of documents contained in a ring binder and with each page clearly numbered at the court not more than 7 days and not less than 3 days before the start of the trial.

[A case summary (which should not exceed 250 words) outlining the matters still in issue, and referring where appropriate to the relevant documents shall be included in the bundle for the assistance of the judge in reading the papers before the trial].

[The parties shall seek to agree the contents of the trial bundle and the case summary].

## Settlement

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**Each party must inform the court immediately if the claim is settled whether or not it is then possible to file a draft consent order to give effect to their agreement.**