

# PRACTICE DIRECTION – THE MULTI-TRACK

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 29

### GENERAL

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

<b>Part 1</b>	The overriding objective
<b>Part 3</b>	The court's case management powers
<b>Part 26</b>	Case management – preliminary stage
<b>Part 31</b>	Disclosure and inspection of documents
<b>Part 32 to 34</b>	Evidence
<b>Part 35</b>	Experts and assessors

and to the practice directions which relate to those Parts.

### CASE MANAGEMENT IN THE ROYAL COURTS OF JUSTICE

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- 2.1 This part of the practice direction applies to claims begun by claim form issued in the Central Office or Chancery Chambers in the Royal Courts of Justice.
- 2.2 A claim with an estimated value of less than £50,000 will generally, unless:
- (a) it is required by an enactment to be tried in the High Court,
  - (b) it falls within a specialist list, or
  - (c) it falls within one of the categories specified in 2.6 below or is otherwise within the criteria of article 7(5) of the High Court and County Courts Jurisdiction Order 1991,
- be transferred to a county court.
- 2.3 Paragraph 2.2 is without prejudice to the power of the court in accordance with Part 30 to transfer to a county court a claim with an estimated value that exceeds £50,000.
- 2.4 The decision to transfer may be made at any stage in the proceedings but should, subject to paragraph 2.5, be made as soon as possible and in any event not later than the date for the filing of pre-trial check lists (listing questionnaires).

- 2.5 If an application is made under rule 3.4 (striking out) or under Part 24 (summary judgment) or under Part 25 (interim remedies), it will usually be convenient for the application to be dealt with before a decision to transfer is taken.
- 2.6 Each party should state in his allocation questionnaire whether he considers the claim should be managed and tried at the Royal Courts of Justice and, if so, why. Claims suitable for trial in the Royal Courts of Justice include:
- (1) professional negligence claims,
  - (2) Fatal Accident Act claims,
  - (3) fraud or undue influence claims,
  - (4) defamation claims,
  - (5) claims for malicious prosecution or false imprisonment,
  - (6) claims against the police,
  - (7) contentious probate claims.
- Such claims may fall within the criteria of article 7(5) of the High Court and County Courts Jurisdiction Order 1991.
- 2.7 Attention is drawn to the practice direction on transfer (Part 30).

## **CASE MANAGEMENT – GENERAL PROVISIONS**

- 3.1
- (1) Case management of a claim which is proceeding at the Royal Courts of Justice will be undertaken there.
  - (2)
    - (a) Case management of any other claim which has been allocated to the multi-track will normally be undertaken at a Civil Trial Centre.
    - (b) The practice direction supplementing Part 26 provides for what will happen in the case of a claim which is issued in or transferred to a court which is not a Civil Trial Centre.
- 3.2 The hallmarks of the multi-track are:
- (1) the ability of the court to deal with cases of widely differing values and complexity, and
  - (2) the flexibility given to the court in the way it will manage a case in a way appropriate to its particular needs.
- 3.3
- (1) On allocating a claim to the multi-track the court may give directions without a hearing, including fixing a trial date or a period in which the trial will take place,
  - (2) Alternatively, whether or not it fixes a trial date or period, it may either –
    - (a) give directions for certain steps to be taken and fix a date for a case management conference or a pre-trial review to take place after they have been taken, or
    - (b) fix a date for a case management conference.

- (3) Attention is drawn to rule 29.2(2) which requires the court to fix a trial date or period as soon as practicable.
- 3.4 The court may give or vary directions at any hearing which may take place on the application of a party or of its own initiative.
- 3.5 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 then.
- 3.6 The court will 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.
- 3.7 When the court fixes a hearing to give directions it will give the parties at least 3 days' notice of the hearing unless rule 29.7 applies (7 days' notice to be given in the case of a pre-trial review).
- 3.8 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.
- 3.9 Courts will make arrangements to ensure that applications and other hearings are listed promptly to avoid delay in the conduct of cases.
- 3.10 (1) Case management will generally be dealt with by:
  - (a) a Master in cases proceeding in the Royal Courts of Justice,
  - (b) a district judge in cases proceeding in a District Registry of the High Court, and
  - (c) a district judge or a Circuit Judge in cases proceeding in a county court.
- (2) A Master or a district judge may consult and seek the directions of a judge of a higher level about any aspect of case management.
- (3) A member of the court staff who is dealing with the listing of a hearing may seek the directions of any judge about any aspect of that listing.

## **DIRECTIONS ON ALLOCATION**

- 4.1 Attention is drawn to the court's duties under Rule 29.2.
- 4.2 The court will seek to tailor its directions to the needs of the case and the steps which the parties have already taken to prepare the case of which it is aware. 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.
- 4.3 At this stage the court's first concern will be to ensure that the issues between the parties are identified and that the necessary evidence is prepared and disclosed.

- 4.4 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 has been agreed with every other party or that it has been served on every other party, and when it was served.
- 4.5 On the allocation of a claim to the multi-track the court will consider whether it is desirable or necessary to hold a case management conference straight away, or whether it is appropriate instead to give directions on its own initiative.
- 4.6 The parties and their advisers are encouraged to try to agree directions and to take advantage of rule 29.4 which provides that if:
- (1) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place), and
  - (2) the court considers that the proposals are suitable,
- it may approve them without a hearing and give directions in the terms proposed.
- 4.7 (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 court will scrutinise the timetable carefully and in particular will be concerned to see that any proposed date or period for the trial and (if provided for) for a case management conference is no later than is reasonably necessary.
- (3) The provision in (1)(c) above may –
- (a) limit disclosure to standard disclosure or 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 say either that the parties must serve a disclosure statement with the copies or that they have agreed to disclose in that way without such a statement.
- (4) The provision in (1)(d) about expert evidence may be to the effect that none is required.
- 4.8 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 of questions to experts under rule 35.6 and by when they are to be dealt with,
  - (3) the disclosure of evidence,
  - (4) the use of a single joint expert, or in cases where it is not agreed, the exchange of expert evidence (including whether exchange is to be simultaneous or sequential) and without prejudice discussions between experts.
- 4.9 If the court does not approve the agreed directions filed by the parties but decides that it will give directions of its own initiative without fixing a case management conference, it will take them into account in deciding what directions to give.
- 4.10 Where the court is to give directions on its own initiative without holding a case management conference and it is not aware of any steps taken by the parties other than the exchange 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 on any appropriate issue unless there is a good reason not to do so,
  - (5) unless paragraph 4.11 (below) applies, to direct disclosure of experts' reports by way of simultaneous exchange on those issues where a single joint expert is not directed,
  - (6) if experts' reports are not agreed, to direct a discussion between experts for the purpose set out in rule 35.12(1) and the preparation of a statement under rule 35.12(3),
  - (7) to list a case management conference to take place after the date for compliance with those directions, and
  - (8) to specify a trial period.
- 4.11 If it appears that expert evidence will be required both on issues of liability and on the amount of damages, the court may direct that the exchange of those reports that relate to liability will be exchanged simultaneously but that those relating to the amount of damages will be exchanged sequentially.
- 4.12 (1) If it appears to the court that it cannot properly give directions on its own initiative and no agreed directions have been filed which it can approve, the court will direct a case management conference to be listed.
- (2) The conference will be listed as promptly as possible.

- 4.13 Where the court is proposing on its own initiative to make an order under rule 35.7 (which gives the court power to direct that evidence on a particular issue is to be given by a single expert) or 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 case management conference.

## **CASE MANAGEMENT CONFERENCES**

- 5.1 The court will at any case management conference:
- (1) review the steps which the parties have taken in the preparation of the case, and in particular their compliance with any directions that the court may have given,
  - (2) decide and give directions about the steps which are to be taken to secure the progress of the claim in accordance with the overriding objective, and
  - (3) ensure as far as it can that all agreements that can be reached between the parties about the matters in issue and the conduct of the claim are made and recorded.
- 5.2
- (1) Rule 29.3(2) provides that where a party has a legal representative, a representative familiar with the case and with sufficient authority to deal with any issues that are likely to arise must attend case management conferences and pre-trial reviews.
  - (2) That person should be someone who is personally involved in the conduct of the case, and who has the authority and information to deal with any matter which may reasonably be expected to be dealt with at such a hearing, including the fixing of the timetable, the identification of issues and matters of evidence.
  - (3) Where the inadequacy of the person attending or of his instructions leads to the adjournment of a hearing, the court will expect to make a wasted costs order.
- 5.3 The topics the court will consider at a case management conference are likely to include:
- (1) whether the claimant has made clear the claim he is bringing, in particular the amount he is claiming, so that the other party can understand the case he has to meet,
  - (2) whether any amendments are required to the claim, a statement of case or any other document,
  - (3) what disclosure of documents, if any, is necessary,
  - (4) what expert evidence is reasonably required in accordance with rule 35.1 and how and when that evidence should be obtained and disclosed,
  - (5) what factual evidence should be disclosed,
  - (6) what arrangements should be made about the giving of clarification or further information and the putting of questions to experts, and

- (7) whether it will be just and will save costs to order a split trial or the trial of one or more preliminary issues.
- 5.4 In all cases the court will set a timetable for the steps it decides are necessary to be taken. These steps may include the holding of a case management conference or a pre-trial review, and the court will be alert to perform its duty to fix a trial date or period as soon as it can.
- 5.5
  - (1) The court will not at this stage give permission to use expert evidence unless it can identify each expert by name or field in its order and say whether his evidence is to be given orally or by the use of his report.
  - (2) A party who obtains expert evidence before obtaining a direction about it does so at his own risk as to costs, except where he obtained the evidence in compliance with a pre-action protocol.
- 5.6 To assist the court, the parties and their legal advisers should:
  - (1) ensure that all documents that the court is likely to ask to see (including witness statements and experts' reports) are brought to the hearing,
  - (2) consider whether the parties should attend,
  - (3) consider whether a case summary will be useful, and
  - (4) consider what orders each wishes to be made and give notice of them to the other parties.
- 5.7
  - (1) A case summary:
    - (a) should be designed to assist the court to understand and deal with the questions before it,
    - (b) should set out a brief chronology of the claim, the issues of fact which are agreed or in dispute and the evidence needed to decide them,
    - (c) should not normally exceed 500 words in length, and
    - (d) should be prepared by the claimant and agreed with the other parties if possible.
- 5.8
  - (1) Where a party wishes to obtain an order not routinely made at a case management conference and believes that his application will be opposed, he should issue and serve the application in time for it to be heard at the case management conference.
  - (2) If the time allowed for the case management conference is likely to be insufficient for the application to be heard he should inform the court at once so that a fresh date can be fixed.
  - (3) A costs sanction may be imposed on a party who fails to comply with sub-paragraph (1) or (2).
- 5.9 At a case management conference the court may also consider whether the case ought to be tried by a High Court judge or by a judge who specialises in that type of claim and how that question will be decided. In that case the claim may need to be transferred to another court.

## VARIATION OF DIRECTIONS

- 6.1 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 have agreed about changes they wish made to the directions given, or
  - (3) where a party wishes to apply to vary a direction.
- 6.2
  - (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.
- 6.3
  - (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) Unless paragraph 6.4 applies, a party should appeal if the direction was given or the order was made at a hearing at which he was present, 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 directions or make a different order.
- 6.4 Where there has been a change in the circumstances since the order was made the court may set aside or vary a direction it has given. It may do so on application or on its own initiative.
- 6.5 Where the parties agree about changes they wish 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) applies 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**

- 7.1 Where a party fails to comply with a direction given by the court any other party may apply for an order that he must do so or for a sanction to be imposed or both of these.
- 7.2 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.
- 7.3 The court may take any such delay into account when it decides whether to make an order imposing a sanction or to grant relief from a sanction imposed by the rules or any other practice direction.
- 7.4
  - (1) The court will not allow a failure to comply with directions to lead to the postponement of the trial unless the circumstances are exceptional.
  - (2) If it is practical 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 then ready, and direct 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. Where it appears inevitable the court may exercise its power to require a party as well as his legal representative to attend court at the hearing where such an order is to be sought.
  - (7) The court will not postpone any other hearing without a very good reason, and for that purpose the failure of a party to comply on time with directions previously given will not be treated as a good reason.

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

- 8.1
  - (1) The pre-trial check list (listing questionnaire) will be in Form N170.
  - (2) Unless it dispenses with pre-trial check lists and orders an early trial on a fixed date, the court will specify the date for filing completed pre-trial check lists when it fixes the trial date or trial period under rule 29.2(2).
  - (3) The date for filing the completed pre-trial check list will be not later than 8 weeks before the trial date or the start of the trial period.

- (4) The court will serve the pre-trial check lists on the parties at least 14 days before that date.
  - (5) 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.
  - (6) The file will be placed before a judge for his directions when all the check lists have been filed or when the time for filing them has expired.
- 8.2 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, of which it is aware which the parties have taken to prepare the case for trial.
- 8.3
- (1) Where no party files a pre-trial check list the court will normally make an order that if no listing 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 (the defaulting party) does not do so, the court will fix a hearing under rule 29.6(3). Whether or not the defaulting party attends the hearing, the court will normally fix or confirm the trial date and make other orders about the steps to be taken to prepare the case for trial.
- 8.4 Where the court decides to hold a hearing under rule 29.6(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.
- 8.5 Where the court decides to hold a pre-trial review (whether or not this is in addition to a hearing under rule 29.6(3)) the court will give the parties at least 7 days notice of the date.

## **DIRECTIONS THE COURT WILL GIVE ON LISTING**

### **9.1 Directions the court must give.**

The court must fix the trial date or week, give a time estimate and fix the place of trial.

### **9.2 Other directions**

- (1) The parties should seek to agree directions and may file an agreed 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 especially expert evidence,
  - (b) a trial timetable and time estimate,
  - (c) the preparation of a trial bundle, and
  - (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) Unless a direction doing so has been given before, a direction giving permission to use expert evidence will say whether it gives permission to use oral evidence or reports or both and will name the experts concerned.

9.3 The principles set out in paragraph 6 of this practice direction about variation of directions applies equally to directions given at this stage.

## THE TRIAL

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- 10.1 The trial will normally take place at a Civil Trial Centre 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.
- 10.2 The judge will generally have read the papers in the trial bundle and may dispense with an opening address.
- 10.3 The judge may confirm or vary any timetable given previously, or if none has been given set his own.
- 10.4 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) statements and reports to stand as evidence in chief.
- 10.5 In an appropriate case the judge may summarily assess costs in accordance with rule 44.7. Attention is drawn to the practice directions about costs and the steps the parties are required to take.
- 10.6 Once the trial of a multi-track claim has begun, the judge will normally sit on consecutive court days until it has been concluded.