

PRACTICE DIRECTION 28 – THE FAST TRACK AND INTERMEDIATE TRACK

This Practice Direction supplements CPR Part 28

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SECTION I

GENERAL PROVISIONS APPLYING TO BOTH FAST TRACK AND INTERMEDIATE TRACK

1. General

1.1 This section contains general provisions about the management of cases allocated to the fast and intermediate tracks. Section II contains further provisions about the management of cases allocated to the fast track.

2. Case management – fast track and intermediate track

2.1 Case management of cases allocated to the fast track and the intermediate track will generally be by directions given at one or more of the following stages in the case—

- (a) at allocation to the track, whether on paper or at a case management conference;
- (b) on the filing of any pre-trial check lists (listing questionnaires); and
- (c) at any pre-trial review.

2.2 The court will hold a hearing to give directions whenever it appears necessary or desirable to do so. Where this happens because of the default of a party or their legal representative, it will usually impose a sanction.

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

2.4 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.

2.5 When the court fixes a hearing to give directions it will give the parties at least 3 days' notice of the hearing.

2.6 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 their statement of case or for further information to be given by another party) they must do so as soon as possible so as to minimise the need to change that timetable.

2.7 Courts will make arrangements to ensure that applications and other hearings are listed promptly to avoid delay in the conduct of cases.

3. 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 28.7 and Rule 28.15.

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 Practice Direction (Pre-Action Conduct) or 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 their directions 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. In noise induced hearing loss claims any defendant requesting a preliminary trial on limitation must file a document with their directions questionnaire which identifies the evidence and legal argument said to give that defendant a real prospect of success on the issue of limitation.

3.5 If—

- (a) the parties have filed agreed directions for the management of the case; and
- (b) 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 provision in paragraph (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—

- (a) the filing of any reply or amended statement of case that may be required;
- (b) dates for the service of requests for further information under Practice Direction 18 and questions to experts under rule 35.6 and when they are to be dealt with;
- (c) the disclosure of evidence; and
- (d) 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—

- (a) to give directions for the filing and service of any further information required to clarify either party's case;
- (b) to direct disclosure between the parties in accordance with rules 28.2(3) and (4);
- (c) to direct the disclosure of witness statements by way of simultaneous exchange;
- (d) to give directions for a single joint expert unless there is good reason not to do so; and
- (e) in cases where directions for a single expert are not given—
 - (i) to direct disclosure of experts' reports by way of simultaneous exchange; and
 - (ii) 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 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.

4. Variation of directions

4.1 Paragraphs 4.2 to 4.5 deal with the procedure to be adopted—

- (a) where a party is dissatisfied with a direction given by the court;
- (b) where the parties agree about changes they wish made to the directions given; or
- (c) 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 they may appeal or apply to the court for it to reconsider its decision.

(2) They should appeal if the direction was given or the order was made at a hearing at which they were present or represented, or of which they had due notice.

(3) In any other case they 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

(1) Where the parties agree about changes to be made to the directions given, 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), rule 3.8(4) (extensions of time by written agreement in circumstances within rule 3.8(3)) or rule 31.5, 31.10(8) or 31.13 (agreements about disclosure) apply, the parties need not file the written agreement.

(2) In any other case—

(a) the parties must—

(i) apply for an order by consent; and

- (ii) file a draft of the order sought and an agreed statement of the reasons why the variation is sought; and
- (b) 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.

5. 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 their 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 their 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 and where a party has filed a pre-trial checklist, but another party has not done so, the file will be placed before a judge for their 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.

6.2 Attention is drawn to rule 28.4(1) (which sets out the court's duty at the pre-trial check list stage) and to rule 28.4(4) (which sets out circumstances in which the court may decide to hold a hearing).

6.3

(1) Where the judge decides to hold a hearing under rule 28.4(4) 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.

(2) 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 checklist the court will order that unless a completed pre-trial checklist is filed within 7 days from service of that order, the claim, defence and any counterclaim will be struck out without further order of the court.

(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.

7. Directions the court will give on listing

7.1 Directions the court must give—

- (a) 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.
- (b) 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 28.5(2), and
- (c) 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; 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)

- (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.

8. The trial

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 one.

8.4 Attention is drawn to the provisions in Part 32 and the following parts of the Rules about evidence, and in particular—

- (a) to rule 32.1 (court's power to control evidence and to restrict cross-examination); and
- (b) to rule 32.5(2) (witness statements to stand as evidence in chief).

SECTION II

PROVISIONS APPLYING ONLY TO CASES ALLOCATED TO THE FAST TRACK

9. Further provisions about directions

9.1 The court will seek whenever possible to give directions without the need for a hearing to take place.

9.2

(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.

9.3 When considering disclosure of documents under 3.6(1)(c) above the court may 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.

9.4 Relevant standard directions can be found at:

<http://www.justice.gov.uk/courts/procedure-rules/civil>. 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.

9.5 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.

9.6

(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 Practice Direction (Pre-Action Conduct) or any 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.

10. Further provisions about the trial

10.1 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.

10.2 The trial period must not be longer than 3 weeks.

10.3 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.

10.4 Save where costs are fixed under Sections VI, Section VIII and Section IX of Part 45, paragraph 9.2 of Practice Direction 44 applies in the fast track.

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