

LITIGATION & DISPUTE
RESOLUTION

New Commercial Hub Practice Direction

A new Commercial Hub Practice Direction (the Practice Direction) has been released, promoting a 'new era' for the management of commercial actions before the NI courts.

The Practice Direction largely replaces the provisions of the previous 2019 Commercial Hub Practice Direction (the 2019 PD), though some novel features are included in the new Practice Direction. Our note summarises the core features and requirements of the 2019 PD which remain, as well as the new additions in the Practice Direction.

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Developments in the Practice Direction

In brief, the new developments in the Practice Direction include:

- (i) the addition of a Case Information Form for upload to the BOX online platform,
- (ii) a facility for administrative directions,
- (iii) 'hybrid' Case Management Conferences,
- (iv) the duty on parties to alert the court to any actual or threatened breach of directions,
- (v) new provision for urgent or bespoke Early Direction Hearings, and
- (vi) the upload of trial bundles to BOX with hard copies no longer required.

Introduction

The Commercial Hub's ('the Hub') objective is the expeditious resolution of disputes between commercial parties. It emphasises the use of ADR where appropriate, and the need to conserve the resources of the courts and parties. It promotes the important message whereby Litigation should be a last resort. A key focus of the Practice Direction is how the Court may make use of sanctions for parties that fail to comply with Directions and deadlines. In the Practice Direction, the submission of documents to the court is now mostly dealt with on the BOX system, a new online platform. We expect a user guide to be made available soon to the public, however at present it is accessible to members of the Law Society online.

Core features of the 2019 PD that are still applicable

The 2019 PD emphasised compliance with its requirements, and added force through potential sanctions, such as costs orders. The penalties for non-compliance feature in the Practice Direction and can be applied by the court to full effect in moving proceedings along.

The Hub has a wide remit and this is restated in the Practice Direction. The Hub can hear any

cause relating to business or commercial transactions as provided in Order 72, Rule 1(2) of the RCJ 1980. This could extend to Chancery cases, applications for ancillary relief, and judicial review cases involving issues of commercial complexity. Whilst the Commercial Judge ultimately decides on which cases are admitted to the Hub, the Judge of the original court division in which the case first entered, shall still hear the case as part of Hub proceedings. Legal practitioners have a duty to refer any case fulfilling the requirements of the Practice Direction to the Commercial Judge for consideration in the Hub. Judges of other Court Divisions have a corresponding duty to refer to the Commercial Judge if the case is deemed more suitable for disposal in the Hub. Proof of the admission of a case to the Hub is evident where the Writ is stamped with the words 'Commercial Hub'.

Cases entered at the Hub are subject to case management procedures. The court will set deadlines for the provision of documents and information by the parties. Sanctions are imposed where these deadlines are not met and on the risk of missing a deadline a party must make an application for an extension of time before the time limit expires. Parties are under a duty to draw the court's attention

to any non-compliance with a deadline of another party in the action.

The pre-trial case management process in the Hub is divided into three key stages. These are (i) the Early Directions Hearing (EDH), (ii) the Case Management Conference (CMC), and (iii) the Pre-Trial Review (PTR) (except where the court is satisfied this stage can be avoided). The Practice Direction indicates that for most cases only three case management hearings will be required. The court may grant further hearings on request of the parties in writing, though there could be cost implications.

Early Directions Hearing

The EDH must take place within three weeks of the date of service of the Writ. On the date the Writ is served, the solicitor for the plaintiff must notify the court office in writing confirming service. The Commercial Judge at hearing will issue case management directions for further proceedings, including a timetable for the remainder of the pleadings and fixing the date of the Case Management Conference. Parties may write to the court office requesting an urgent or bespoke EDH if required, but this will not be available in all circumstances. It would be available, for instance, in an action for summary judgment.



Parties are advised to adopt a collaborative approach to discovery and consideration should be given to the parameters of the information requested and the appropriate medium, i.e. whether in hard copy or electronic format. A party that unnecessarily insists unilaterally on full discovery of all documentation, contrary to the over-riding objective, could be vulnerable to cost penalties, regardless of whether the case is decided in their favour.

Case Management Conference

The CMC enables the court to ensure that proceedings are ready for trial. All parties and all key persons in the dispute are required to attend. At least seven days in advance of the CMC, the plaintiff must file in hard copy and electronically the core documents in accordance with paragraph 33 of the Practice Direction (such as pleadings, applications, chronology, agreed directions etc.). The plaintiff will be penalised at the court's discretion where they have failed to file the required material on time in advance of the CMC.

The court will consider, amongst other items, the pre-trial timetable, the suitability of ADR

in the dispute and the arrangements for discovery and potential fast-track resolution. The date for trial will also be set down. Normally there is no requirement for reviews between the CMC and the PTR, however the parties may write to the court to request a hearing for any interlocutory applications or where a party has not complied with case management directions.

Pre-Trial Review

At the PTR the court will further assess compliance with case management directions and the groundwork for trial. At least seven days before the PTR, the plaintiff shall send to the Commercial Judge and the defendant a form confirming that the pleadings and evidence are all in order (see paragraph 41 in the Practice Direction). If satisfied, the Commercial Judge may be content to forgo the PTR stage. The timetable for the trial will be set at PTR unless previously directed.

Skeleton arguments and trial bundles should be filed in electronic format. Hard copy bundles are no longer required under

the Practice Direction. The core bundle, containing only the documents most essential to the case and for reference in the skeleton arguments, should be available four weeks before the date of the trial. Parties responsible for the inclusion of non-essential materials can be penalised in costs regardless of the case outcome. The Practice Direction sets out clear instruction in relation to the formatting of trial bundles and time for service.

Whilst the Commercial Judge will attempt to issue judgment as soon as possible after the conclusion of a trial, six weeks is the normal time to be expected. The issuance of judgments in more complicated cases may take longer.

What's New?

We have highlighted below the core changes and additions in Practice Direction.

Revamped Early Directions Hearing

Breach of Time Limits



New Commercial Hub Practice Direction

The Practice Direction places a duty on the parties in dispute before the court to immediately draw the court's attention to any breach of time limits in directions. Furthermore, even a likely breach of a time limit should be referred to the court. Non-compliance must be justified by the party in breach or in contemplation of breach.

This will promote an expeditious approach to the litigation process and limit delay tactics, which should assist in minimising costs.

Administrative Directions

The Commercial Judge can make directions administratively, i.e. on the papers at any stage in the case management process, but only where the parties have agreed directions in advance. The parties must no longer attend court for the EDR. However, bespoke or urgent arrangements can now be provided for when parties are unable to agree directions.

Case Information Form

A further development is the collaborative completion by parties of the Case Information Form (Form COM1). The form is uploaded to BOX at least 5 days prior

to the EDH, and accompanies the parties' submissions for each stage of the commercial action before trial. The form should capture the most important administrative details in the case. Where parties cannot agree on the content of the form, each party should upload to BOX its own form setting out their respective positions.

Revamped Case Management Conference

CMCs will now take place as hybrid hearings for which all parties, plus key individuals, counsel and solicitors must attend. Counsel should appear in person, though solicitors and clients can attend remotely if needed.

The plaintiff must upload the Case Information Form at least seven days before the date fixed for the CMC. Core documents (see paragraph 33 in the Practice Direction) must also be served both in hard copy and electronically.

Revamped Pre-Trial Review

The plaintiff must upload the Case

Information Form (as mentioned above) for this stage of the action to BOX at least seven days before the date fixed for the PTR.

The required layout and formatting of trial bundles has changed in the Practice Direction. Each file should be available in an e-format and uploaded to BOX unless the court has directed otherwise. Each trial bundle uploaded should not exceed more than three hundred pages. The Practice Direction sets out the formatting and submission requirements then for trial bundles. All trial bundles should be available on BOX at least two weeks in advance of the date set for trial.

the precious resources of the courts and litigants.

Conclusion

The worldwide coronavirus pandemic has led to a re-evaluation of the management of high-value commercial actions before the NI courts. Whilst a lot of core content of the 2019 PD remains intact, litigants must now embrace the streamlined case management procedure that focuses on digitalisation and strict compliance with deadlines, all with the aim of enabling efficient resolution of the dispute. This is an important step for the running of commercial disputes in NI and a step in the right direction towards conserving





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