

The winds of change

Commercial litigation developments in Northern Ireland

Whilst the years since the “credit crunch” have seen plenty of high profile and cutting edge commercial litigation cases in Northern Ireland, Lord Justice Gillen's Report on Civil Justice published in September 2017, highlighted scope for changes to the litigation landscape. These proposed changes included embracing technological advances and introducing measures aimed at greater efficiency in the commercial litigation system. One of the recommendations of that report will come into effect in April 2019.

Substantial changes are now afoot.

On 7 December 2018, Mr Justice Horner, Commercial Court Judge, presented to Law Society members at the Europa Hotel in Belfast on the new Commercial Court Hub (the “Hub”), a concept which arose from Lord Justice Gillen's report of 2017.

It has recently been confirmed that the Practice Direction setting out the detailed working of the Hub will commence operation on 29 April 2019.

Once operational, the Hub will oversee (i) Commercial Court actions, (ii) Chancery cases falling within Order 72 Rule 10 (cases within the Chancery Division which can be dealt with as though listed in the Commercial Court), (iii) Ancillary Relief applications and (iv) Judicial Review applications which involve complex commercial issues. The Commercial Judge will be the final arbiter when deciding what cases are to be admitted to the Hub.

The measures set out in the Practice Direction will bring efficiencies in terms of costs, time and resource to the forefront of all commercial litigation in Northern Ireland. Whilst the changes will have a familiar air to those of us who have experience of commercial litigation in England and Wales, or Dublin, undoubtedly the proposed changes are profound for commercial litigation practice in Northern Ireland. As noted at the end of this article, we very much welcome these changes at Eversheds Sutherland.



In brief, the proposed changes are as follows:

Efficient case management

One of the key changes proposed is the introduction of more formal case management hearings. A three stage approach will be used which is intended to replace the current ‘review’ system (under which it is not uncommon for multiple reviews to take place, leading to extra cost and time spent).

The *first* stage of the new case management system will involve an **Early Directions Hearing**. These will take place within 3 weeks of the service of the writ of summons or originating process. Early Directions Hearings will allow the judge to give directions on a range of issues, including (i) a timetable for pleadings; (ii) the preparation of expert evidence and expert meetings; (iii) costs estimates for legal representatives and experts; (iv) alternative dispute resolution or early neutral evaluation; (v) discovery; and, (vi) the date for a Case Management Conference. The Practice Direction also provides for urgent or bespoke Early Directions Hearings at the discretion of the Court, however these will only take place when shown to be necessary and, in any event, will be listed no later than 3 weeks of the service of the writ of summons or originating process.

The *second* stage involves a **Case Management Conference** (the "CMC") which will help prepare the trial so that it can be dealt with in a just, expeditious and cost efficient manner. All parties, including legal advisors and clients, are required to attend. Within 7 days prior to the CMC the plaintiff/petitioner/applicant will be required to file, serve and/or confirm the following (i) the pleadings; (ii) orders and interlocutory applications; (iii) a pre-trial timetable, if agreed or ordered; (iv) any agreements regarding discovery; (v) an agreed summary of the case; (vi) any agreements regarding experts or expert evidence; (vii) a time estimate for the Judge to read the core bundle and authorities; (viii) an agreed chronology; (ix) a list of issues, agreed if possible; (x) the relevant disputed facts; (xi) agreed or suggested directions; (xii) confirmation as to whether or not the case can be expedited; (xiii) a preferred hearing venue; (xiv) updated costs estimates; and (xv) proposals for alternative dispute resolution. The Court may impose adverse costs orders if any of the above matters are not dealt with within 7 days of the CMC.

At the CMC the Court will deal with a range of matters which will include confirming the issues to be considered, dates and timeframes, alternative dispute resolution, discovery, expert evidence and costs. The Court may also decide to separate liability and quantum in each case.

The *third* stage of the new process will involve a **Pre-Trial Review** (the "PTR"), however it should be noted that these may not be required in every case. The PTR will deal with the practical and logistical preparations required prior to trial. Before such a hearing, the plaintiff/petitioner/applicant will be required to confirm various matters to the Court, including that pleadings have been finalised, discovery has been made as directed by the Court and that all other documents or matters have been served, issued or confirmed as required. During the PTR, the Court will set a timetable for trial, if not already set.

Efficient preparation of discovery and court bundles

The Practice Direction reminds practitioners of the requirements under Order 1 Rule 1(1)A of the Rules of the Court of Judicature, namely that there is an overriding objective to deal with cases justly and expeditiously

In terms of discovery, in advance of Early Directions Hearings, parties are asked to have considered or agreed the level of discovery required, which may include no discovery being exchanged, standard discovery, full discovery, electronic discovery or discovery on an issue by issue basis.

If a party unilaterally seeks full discovery and such discovery is later deemed unnecessary, the Court may impose an adverse costs order on the party who sought full discovery. This new approach to discovery in Northern Irish commercial litigation is intended to keep costs to a minimum.

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In addition, the Practice Direction also provides guidance in relation to Court bundles. Firstly, the Core Bundle should be available four weeks prior to the trial and should only contain "the essential documents necessary to resolve the issues in the case". This approach is intended to prevent voluminous copies of files being produced and to limit the documents only to those which are relied upon or referred to at trial. Where unnecessary documents have been included in a bundle, the Court may issue an adverse costs order against the party responsible, regardless of the outcome of the proceedings.

The Practice Direction also provides that trial bundles should be clearly indexed and easy to follow, and where possible, authorities should be in an agreed bundle, limited to a small number of cases.

A commercial hub for all of Northern Ireland

Finally, the Practice Direction envisages that the Hub will sit in suitable venues throughout Northern Ireland, making commercial litigation more accessible to businesses beyond the periphery of Belfast.

Summary

Overall the Practice Direction, once finalised and implemented, should have the effect of streamlining commercial actions, as well as driving down costs in such proceedings, particularly in terms of reducing wasted Court time and by limiting discovery. Parties who are found not to have complied with the direction will be dealt with by the use of adverse costs orders.

At Eversheds Sutherland, our experienced practitioners with multi-jurisdictional experience are well placed to guide clients through the changing litigation landscape in Northern Ireland.

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