

PRACTICE DIRECTION 5/2010

IN THE HIGH COURT OF NORTHERN IRELAND

CHANCERY DIVISION

**SETTING DOWN AND FIXING DATES FOR TRIAL OF ACTIONS BEGUN BY WRIT**

1. This direction replaces and revokes Practice Directions 1997 No. 4 and 2003 No. 8.
2. Order 34 specifies the requirements for setting down for trial by a Judge of an action begun by writ. To set the action down for trial 2 bundles or books of pleadings are required to be lodged in the Chancery Office.

The index of a typical book is as follows: -

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(11)	Request for trial (Form 34 Appendix A)	
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3. Affidavits, unless they have been ordered to stand as pleadings, and notices to produce, need not be included in the books. The setting down fee should be paid at the Court of Judicature Front of House Office where one of the forms of Request for Trial (Form 34) will be received accordingly.

As per O.34, r.4(2): "Each of the said bundles must be bound up and indexed in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18 rule 12(7) applies shall be placed immediately after the pleading to which they relate, and the bundle which is to serve as the record must be stamped with the stamp denoting payment of the fee payable on setting down the action and have indorsed thereon the names, addresses and telephone numbers of the solicitors for the parties or, in the case of a party who has no solicitor, of the party himself".

The books must be legible. If, for example, the pleading served by the opposite party is difficult to read, it is not sufficient for the party setting down to make photocopies of such a pleading for the books. Clear copies of such a pleading should be made.

Attention is also drawn to Practice Direction 9/2006 requiring the insertion of a unique solicitor's reference in brackets after the name and address of the issuing, filing or lodging solicitors.

4. No action will be listed before the Judge until the 'Chancery Division Listing Questionnaire' is completed in full and returned to the Chancery Office. It should be noted that there are several mandatory sections within the questionnaire, such as confirmation that documents have been exchanged and that expert and factual witnesses have been identified; these sections will require an affirmative response prior to acceptance by the Chancery Office. If the party setting down the action has completed the Questionnaire but another party has neglected to do so the party in compliance with the Direction may have the case listed before the Judge.
5. A copy of the Chancery Office questionnaire is attached hereto.
6. The party setting down must, within 24 hours after doing so, give notice in Form 35 of Appendix A to the other parties that he has done so (O.34, r.7(1)).
7. Either the solicitor or counsel engaged for each party should attend for the purposes of fixing a date. At the hearing counsel or solicitors should be in a position to report on any special features and to give estimates of:
  - (i) The time which will be required for any interlocutory proceedings before the

Master; and

- (ii) A proposed date and anticipated length of the trial.
8. Actions sometimes do not proceed to trial on the date fixed because, for example, of the failure of one or more parties to make discovery of documents (O.24). Should it become apparent that the time allowed for completion of any interlocutory proceedings is insufficient and it is unlikely that the action will be ready for trial on the date fixed, the parties must inform the Chancery Office immediately so that the action may be listed again before the Judge so that a new date for trial can be fixed if this is considered necessary.
  9. The smooth running of the lists depends upon the co-operation of counsel and solicitors in directing and obtaining proofs and making necessary interlocutory applications before the Master as soon as practicable and in keeping the Office informed promptly about pending applications to have a case taken out of the list, settlements and proposed settlements (O.34, r.7(2)).
  10. Supplemental books of pleadings.  
“The party who has set an action down for trial must deliver to the (Chancery) Office two copies of any documents of the kind specified in paragraph (1) which have come into existence between the date of setting down and the day preceding the trial of the action.” O.34, r.4(6). These may be included in the Trial Bundles.
  11. Third party proceedings (O.34, r.4(3))  
“Where a third party notice has been issued under Order 16, the party issuing the notice (whether with or without leave) must, as soon as practicable after receiving notice that the action has been set down for trial or on setting down the action for trial (unless the third party proceedings have been disposed of or abandoned), deliver to the appropriate office two bundles prepared in accordance with paragraph (1) each consisting of one copy of the third party notice and all documents in the third party proceedings corresponding to those specified in paragraph (1).”
  12. Where a Defendant has issued a Notice under O.16, r.8 against another party, he shall apply to the judge at a review promptly thereafter to give such directions as are appropriate for any pleadings, or other steps, between the parties to such Notice.
  13. Parties should also note:
    - (i) Failure to comply with the Rules of Court and these directions may mean that the books of pleadings have to be returned to the party concerned, with consequent delay in fixing a date for hearing.

- (ii) Notices for Particulars and the Replies to them are frequently as important as the pleadings to which they relate and must be included in the book O.34, r.4 (1)(b).
- (iii) Counsel should consider whether in the first instance evidence of any particular fact should be adduced by affidavit in accordance with Order 38.
- (iv) Solicitors should ensure that affidavits are actually and properly sworn. Filing an affidavit purporting to be sworn when not actually sworn is wholly unacceptable.
- (v) A common error is failure to include the requisite legal aid documents in the book (O.34, r.4(1)(d)).
- (vi) Practitioners should also bear in mind that greater use could be made in Chancery proceedings of Calderbank letters (see *Calderbank - v - Calderbank* [1975] 3 All ER 333 at 342). In appropriate circumstances the court will accord considerable weight to such letters in awarding costs.
- (vii) If the matter is settled after the fixing of a definite trial date Counsel shall immediately inform the Chancery Office.

14. 14 days prior to trial the plaintiff shall lodge in the Chancery Office a bundle (Bundle A) paginated and indexed comprising the following sections:

- (a) Section 1 - plaintiff's Skeleton Arguments.
- (b) Section 2 - a chronology of events.
- (c) Section 3 - any proposed or actual amendments to the pleadings after setting down; (the judge will be given the setting down bundle with the pleadings at the date thereof to be part of Bundle A).

15. At the same time the plaintiff shall lodge in the Chancery Office a bundle (or bundles if necessary) (Bundle B) paginated and indexed comprising in separate sections:

- (a) All documents to be relied upon by the plaintiff.
- (b) All documents to be relied upon by the first defendant.

If there is more than one other party the bundle shall include the documents relied on by the other defendants and/or third party or subsequent parties. It shall be the responsibility of the defendants and other parties to furnish to the plaintiff the documents to be relied on by them in advance of trial for incorporation into the bundle. The parties should use their best endeavours to produce an agreed bundle of documents. If there is any dispute as to the admissibility or relevance of any document it should not be included in the bundle but kept in a separate file. If the Court admits the document it can then be inserted in Bundle B at the appropriate place.

(c) The bundle should be wholly legible and arranged chronologically in a ring binder or lever-arch file. Where documents are copied unnecessarily or bundled incompetently the costs may be disallowed. Any document not included in the bundle which is adduced in evidence at the trial should be hole-punched for ease of insertion into the bundle at the appropriate place.

16. (a) Where maps and photographs are to be relied on, practitioners should ensure

that the provisions of Order 38 Rule 3A are complied with.

(b) Where photographs are to be relied on they should either be presented in album form with each photograph numbered, dated and described in the album or, if less than 5, numbered, dated and described on the rear thereof.

(c) Where maps are to be used in the Court, they should be proved with clear copies.

## COMMENCEMENT

This Practice Direction will come into effect on 4 May 2010.

Dated this 19<sup>th</sup> day of March 2010

By the Direction of the Honourable Mr. Justice Deeny

.....

Master Ellison

[REDACTED]

**A COPY OF THIS QUESTIONNAIRE SHOULD BE COMPLETED BY BOTH THE PLAINTIFF(S) AND DEFENDANT(S).**

**SHORT TITLE:**

**REF NO:**

Please indicate if you act for the -

<input type="checkbox"/>
<input type="checkbox"/>

Plaintiff

Defendant

**SOLICITORS:**

**COUNSEL:**

**The sections marked by \* will require an affirmative response prior to acceptance for listing by the Chancery Office (subject to par. 4 of Practice Direction 5/2010).**

**\*HAS COUNSEL DIRECTED PROOFS?**

**[Litigants in person must carefully consider what witnesses and other proofs they will require for the trial of the action and locate the present whereabouts of essential witnesses.]**

**\*HAVE THE PARTIES EXCHANGED LISTS OF DOCUMENTS PURSUANT TO ORDER 24 rule 1 OR AGREED IN WRITING THAT DISCOVERY IS NOT REQUIRED?**

**\*HAVE THE WHEREABOUTS OF ESSENTIAL EXPERT AND FACTUAL WITNESSES BEEN IDENTIFIED?**

**HOW MANY OF EACH WILL BE CALLED?**

**\*HAVE YOU SERVED REPLIES TO ANY NOTICE FOR PARTICULARS?**

**WHAT ARE THE KEY ISSUES?**

**HAVE SKELETON ARGUMENTS BEEN EXCHANGED?**

**HAVE THERE BEEN ANY SETTLEMENT NEGOTIATIONS?**

**ARE THERE ANY PENDING INTERLOCUTORY APPLICATIONS?**

**IS AN EARLY TRIAL DATE SOUGHT AND IF SO, WHY?**

**WHAT IS COUNSEL'S ESTIMATE OF THE LENGTH OF TRIAL?**

**DOCUMENTS FOR TRIAL**

**DOCUMENTS FOR TRIAL MUST BE PREPARED AND LODGED IN ACCORDANCE WITH PRACTICE DIRECTION NO. 5/2010 [A COPY IS ATTACHED HERETO FOR YOUR INFORMATION].**

**FAILURE TO COMPLY MAY RESULT IN THE COURT ORDERING THAT A PERCENTAGE OF THE COSTS BE DISALLOWED**

