

**To: All County Court Judges
All District Judges
All Deputy County Court Judges
All Deputy District Judges**

24 June 2004

**Practice Note No 9
Certificates of Readiness**

1. The Belfast Solicitors' Association has sought advice as to what a plaintiff's solicitor has to do to check that all interlocutory matters are dealt with before serving a Certificate of Readiness under Order 8 Rule 3 of the County Court Rules. Following consultation with The Council of HM County Court Judges and the County Court Liaison Committee this Practice Note is being issued to the profession in response to that request in an effort to provide guidance for practitioners.
2. The obligation to lodge a Certificate of Readiness under Order 8 Rule 3(1) of the County Court Rules arises in two situations. The first is where the judge directs under Order 8 Rule 3(2) that the case be set down for hearing in default of a Certificate of Readiness being lodged within six months from the filing of the notice of intention to defend. The second is where a Certificate of Readiness is lodged in the normal way by the plaintiff's solicitor under Order 8 Rule 3(1).
3. In the first situation, that is where the judge directs that the case be set down for hearing and fixes a date for the hearing, by virtue of the provisions of Section 5(4)(iii) of the Consolidated Practice Direction the Certificate of Readiness must be lodged within 14 days. In those circumstances the date for hearing will have been fixed by the judge to allow any remaining steps that are required (including, where necessary, interlocutory applications) to be completed. Where a judge has set the matter down the plaintiff's solicitor is not entitled to delay serving the Certificate of Readiness because there may still be outstanding interlocutory issues. A failure to lodge a Certificate of Readiness within 14 days may result in the case being dismissed without prejudice.
4. In the second, and more usual, situation where the plaintiff's solicitor believes the case is ready for hearing a Certificate of Readiness complying with Form 43 is lodged. Form 43 requires the plaintiff or plaintiff's solicitor to certify

“(1) that to the knowledge of the plaintiff;

- (a) there are no remaining interlocutory issues between the parties;
and
- (b) that these proceedings are ready for hearing; ..”

A plaintiff or a plaintiff’s solicitor considering whether to lodge a Certificate of Readiness has therefore to address two distinct but closely related questions. The first is whether there are any interlocutory matters outstanding. In this context “interlocutory” means applications under the County Court Rules, such as replies to notices for particulars or applications for discovery. The second is whether the proceedings are ready for hearing, and a case may not be ready for hearing even though all interlocutory matter have been, or appear to have been, disposed of. For example, where one of the parties wishes to update its medical evidence.

5. Whilst it is not possible to identify in advance every type of issue that might be relevant, nevertheless there are a number of situations that arise in practice which have a bearing on either or both of these questions.

- The plaintiff has not replied to the defendant’s notice for particulars.
- The plaintiff is aware that a further medical examination has been, or will have to be arranged, either on behalf of the plaintiff or on behalf of the defendant, and serving a Certificate of Readiness may result in the case being set down for hearing before the date of the medical examination. This often results in an application for an adjournment because in many divisions on receipt of a Certificate of Readiness the case will be listed for a date in advance of any date on which it is possible to arrange a further medical examination. The judge may strike out the Certificate of Readiness in such cases, and the fee is thereby forfeited and the hearing date vacated.
- The plaintiff has not served any, or the most recent, medical evidence on the defendant yet sends the Certificate of Readiness with the medical evidence and/or the replies to the notice for particulars. This deprives the defendant of the opportunity to consider the evidence and respond as appropriate.
- The plaintiff serves the Certificate of Readiness before replying to the defendant’s solicitor’s request for disclosure of the plaintiff’s medical notes and records and/or a request for the identify of the plaintiff’s general practitioner to enable such an application to be brought.
- The defendant’s solicitors indicate that they wish to join a third or subsequent party out of time.
- Discovery is still outstanding from the defendant.
- The defendant’s solicitors ignore requests for inspection.

6. These are the most common problems that arise in practice. Where the plaintiff's solicitor is at fault, they can arise because the Certificate of Readiness is served before counsel has directed proofs (if counsel is to be instructed), and may result in a successful application being made by the defendant's solicitors to strike out the Certificate of Readiness on the basis that they have not had adequate time to respond to the plaintiff's case. On the other hand, the plaintiff's solicitor is not infrequently faced with the dilemma created by failure of the defendant's solicitor to indicate whether the defendant is ready for trial once the plaintiff has served all of his evidence. In such circumstances how can the plaintiff's solicitor decide whether both sides are ready for trial?
7. A plaintiff's solicitor is not obliged to, and should not, wait for a lengthy period before lodging a Certificate of Readiness if the defendant's solicitor has had a reasonable period of time to consider and respond to the plaintiff's case. The plaintiff's solicitor is entitled to serve a Certificate of Readiness once it appears that all reasonable steps have been taken by **both** sides to prepare the case for hearing. This decision can only be made in the light of a common sense evaluation of all the matters known to, or reasonably anticipated by, the plaintiff's solicitor. It is not always possible for the plaintiff's solicitor to anticipate what steps the defendant might wish to take on receipt of the plaintiff's evidence, or otherwise to prepare for trial. The prudent course for the plaintiff's solicitor to adopt when he or she feels that the case is now ready for hearing is therefore to write an open letter to the defendant's solicitors saying that as the plaintiff considers the case is now ready for hearing a Certificate of Readiness will be served within 14 days of the date of the letter unless the defendant's solicitor objects within that time, and, if the defendant contends that it is not ready for hearing, gives a satisfactory reason why the Certificate of Readiness should not be lodged.
8. If the defendant's solicitor does not reply within that period, or the plaintiff's solicitor considers that the defendant's solicitor's objection to the Certificate of Readiness being served is unreasonable, the plaintiff's solicitor should lodge the Certificate of Readiness and leave the defendant to move to strike it out, so that the court can decide whether the case should be set down or not

A.R.Hart
Presiding Judge