

The Shorter and Flexible Trials Pilot Schemes

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The Hon. Mr Justice Birss

The Impetus for the Shorter and Flexible Trials Schemes

- Two approaches – shorter and flexible
- Wider applicability to business cases in general
- Working Group of judges in the Rolls Building and lawyers
- Consultation on proposals
- Pilot Scheme: PD 51N Shorter and Flexible Trials Pilot Schemes
- Party control vs court control

The Pilot schemes overall

- PD 51N paragraphs 1.1 to 1.5
- Operate in Courts in Rolls Building
 - Chancery Division (inc Patents Court and Companies Court) [not IPEC]
 - Commercial Court, London Mercantile, TCC, inc. Financial List
- Applies to claims issued after 1 Oct 2015
- Runs for two years - claims issued in 2 year period (or transferred in)
- The working group continues to monitor and act as point of contact
- Not as well known as Financial List, but has begun to be used

The Shorter Trial Scheme

- Offers the chance of resolving disputes in a substantially shorter period of time and with less cost
- Lesson of IPEC – cases which used to be tried in one or two weeks are getting done in one or two days
- Streamlined directions leading to judgment within a year of issue of proceedings
- Confined to “commercial and business” cases which can be fairly tried on the basis of limited disclosure and oral evidence (*Family Mosaic v Peer Real Estate* [2016] EWHC 257 (Ch))
- Rules are in PD 51N para 2.1 to 2.62
- Not consensual – claimant opts in
- Case could be transferred in or out as appropriate (*Family Mosaic*)

The Shorter Trial Scheme, cont.

- Features:
 - Streamlined Pre Action Protocol
 - Docketed judge – trial and case management
 - At CMC - review issues, streamlined disclosure, limit oral evidence, fix trial date
 - Applications should be at CMC, others will be primarily on paper
 - Restriction on extensions of time
 - Trial – up to 4 days (including reading), strict management of time, cross examination controlled, only principal parts of case to be put to witnesses
 - Trial within 8 months of CMC, judgment within 6 weeks
 - Costs assessed summarily – no budgeting
 - Appeals – Court of Appeal will take scheme into account

Flexible Trials procedure

- Operates as an alternative to the Shorter Trials scheme
- Emphasis on flexibility and choice: if it works in arbitration, why not in court?
- Consensual – parties agree a procedure, subject to court control
- Enables parties by agreement to adapt trial procedure to suit their particular case
- Default Flexible Trial procedure set out in PD51N:
 - Involves limited disclosure
 - Enables identified issues to be determined on the basis of written evidence and submissions
 - oral evidence limited to key witnesses and/or issues,
 - oral expert evidence limited to key issues

Other recent developments

- CE File in Rolls Building – electronic working
- Report of Briggs LJ
 - Court of Appeal workload
 - Online court
 - Regions
- Practice Note re listing Patent trials
- UPC



JUDICIARY OF
ENGLAND AND WALES

THE HON. MR JUSTICE BIRSS
HIGH COURT JUDGE, CHANCERY DIVISION

Thank you

Questions?