

PRACTICE DIRECTION NO 20 of 2021

THE CASE MANAGEMENT CONFERENCE, PRETRIAL REVIEW AND TRIAL DATE CERTAINTY

PREAMBLE

Having regard to the Judiciary's strategic objective of improving stakeholder satisfaction by increasing accessibility to efficient court services, this Practice Direction is issued by the Honourable Chief Justice after consultation with Judges.

The purpose of the Practice Direction is to ensure that the Supreme Court manages, more efficiently, all cases to which the Civil Procedure Rules (CPR) apply so as to:

- (a) arrest and reverse the practice of scheduling these cases into backlog;
- (b) ensure that trial dates are fixed and/or confirmed **only** when cases are ready for trial; and
- (c) dispose of cases justly and efficiently.

FRONT LOADED CASE MANAGEMENT

1. **Front Loaded Case Management (FLCM)** is a Judicial Officer driven process for ensuring the earlier, more effective preparation of cases to which the CPR apply. It is aimed at capitalising on the various opportunities which are available throughout the litigation process for the timely resolution of cases and ensuring that only those matters which are necessary to be tried are assigned trial dates.
2. **A Judicial Officer** means a person who sits as a Judge or Master in Chambers of the Supreme Court.
3. Commencing on September 16, 2021 all proceedings to which the CPR apply will be conducted and managed in a manner which gives effect to the FLCM principles set out in this Practice Direction.

GOOD FAITH MEDIATION

4. Parties to the proceedings are encouraged to participate in good faith efforts to settle disputes at mediation conducted pursuant to any provision of the CPR, unless there is an order of the Court dispensing with mediation.
5. Good faith efforts to settle the dispute at mediation require the parties to the litigation to be transparent. In that regard, in addition to their respective Statement of Issues and statements of case, parties are encouraged to present to the mediator, documentation which is relevant to the prosecution and defence of the claim.

CASE MANAGEMENT CONFERENCE (CMC)

6. At the CMC the Court must give directions which:
 - a. facilitate earlier and effective preparation of cases to which the CPR apply; and
 - b. enable the Court at a Pre-Trial Review to better assess trial necessity and/ or readiness.
7. At any First Hearing of a Fixed Date Claim Form, CMC or at any event where a Judicial Officer proposes to fix or adjust the timetable for the trial of a claim, the Judicial Officer is encouraged to fix **“the period within which the trial is to commence” pursuant to CPR 27.9 (5) (a) (ii), rather than a specific trial date.**
8. Unless another Practice Direction provides otherwise or the circumstances in a specialist court or division (for example Revenue, Commercial, Insolvency, Admiralty) or any other division permit the fixing of an earlier trial period, **the commencement period for the trial of cases to which the CPR apply is the 2023 Hilary Term.**
9. Pursuant to CPR 27.9 and 26.1 (2) (v), at the First Hearing of a Fixed Date Claim Form, CMC or at any event where the Judicial Officer proposes to fix or adjust the timetable for the trial of a claim, the Judicial Officer should, **in addition to fixing the period within which the trial is to commence**, issue directions for any or all of the following where appropriate and having particular regard to the nature of the claim:

- (i) *Pre-Trial Review (if required);*
- (ii) *Standard disclosure and inspection;*
- (iii) *Number of Witnesses;*
- (iv) *Service of Witness Statements;*
- (v) *Service of experts' reports (if any);*
- (vi) *Agreed statement of facts;*
- (vii) *Agreed statement of issues;*
- (viii) *Agreed statement of the basic technical, scientific or medical matters in issue;*
- (ix) *Agreed statement as to any relevant specialist area of law;*
- (x) *Agreeing documents or other physical evidence which are to be put into evidence at trial;*
- (xi) *Timelines for the service of notices to produce; notices and counter notices if any under the Evidence Act; and for time to be abridged or extended as appropriate under the said Act where a party intends to rely on documents or other physical evidence at trial but there is not agreement to put them into evidence;*
- (xii) *Whether trial is to be before a judge alone, judge with a common jury or judge with a special jury;*
- (xiii) *The date by which the parties are to file and serve Listing Questionnaires;*
- (xiv) *Sanctions for non-compliance;*
- (xv) *The party who is to draft and serve the order; and*
- (xvi) *Such other orders as may be appropriate to ensure the efficient, fair, just and timely resolution of the issues.*

10. Subject to the availability of dates in the Court's calendar, where a Pre-Trial Review is ordered it should be fixed for a date no later than twelve (12) months after the date at which the CMC directions are made.

11. Dates fixed for compliance with the CMC directions should be within the period of twelve (12) months of the date at which the CMC directions are made and in any event, no less than thirty (30) days prior to the date fixed for Pre-Trial Review.

12. Listing Questionnaires are to be filed and served no less than thirty (30) days prior to the date fixed for Pre-Trial Review.
13. Applications for witnesses to be appointed as experts are to be made at a CMC and save in exceptional circumstances, the Judge at the Pre-Trial Review should only be asked to confirm that expert evidence is to be called and/or if expert reports may go into evidence without the expert being called, and give directions as to the giving of evidence generally at trial.
14. In every case where a date for CMC has been fixed and a Notice of Application for Court Orders is filed subsequently, the applicant must indicate on the face of the application in bold text the date and time of the CMC. *See Appendix for example.*
15. Where a Notice of Application for Court Orders is filed in the circumstances of paragraph 14, the Registrar shall, in his or her discretion, and having regard to the urgency, the nature, timing and number of such applications, either fix the Notice of Application for Court Orders for hearing at the CMC or fix a separate date for the Notice of Application for Court Orders to be heard.
16. Where the Registrar exercises the discretion to fix a separate date for the hearing of the Notice of Application for Court Orders, the CMC date is to be vacated and the Judicial Officer before whom the Notice of Application for Court Orders is fixed is at liberty to treat that hearing as a CMC and make orders accordingly.

PRE-TRIAL REVIEW (PTR)

17. Pursuant to Rule 38.7 of the CPR the date on which the trial is to be held shall be fixed at Pre-Trial Review upon the Judge reviewing the Listing Questionnaires and all other documents required by the CPR to be filed for use at a PTR and upon being satisfied that the matter is ready for trial.
18. In addition to fixing trial dates and giving directions pursuant to the CPR, the Judge at Pre-Trial Review may make orders for any or all of the following:

- (a) The admissibility of documents under the Evidence Act or otherwise;

- (b) The admissibility of witness statements or parts of witness statements as being in breach of the hearsay rule, irrelevant or otherwise;
- (c) Limiting cross examination to no more than 45 minutes per witness in cases meeting the following criteria:
 - i. the claim does not involve complex issues of law or fact;
 - ii. regardless of the number of witnesses;
 - iii. whether or not represented by counsel;
- (d) where there is significant disagreement between or among the experts, that they be ordered to meet in accordance with CPR rule 32.14 and the court is to make such orders as are appropriate.

19. The Judge at a PTR may also determine whether the matter or aspects of the matter can be resolved in a summary way or by determination on a question of law by a Judge in Chambers and without trial; and such other matter or question that may arise and which in the discretion of the Judge is appropriate to be determined at that stage so as to facilitate the fair efficient and timely trial of the case.

20. Should the Judge at a PTR determine that a matter is not ready for trial, the matter may be relisted for CMC or the PTR may be adjourned and directions given to enable the matter to become ready, and in either event the Judge may make unless orders as appropriate.

21. Where a PTR is adjourned directions should be given for the filing of a Further Listing Questionnaire ahead of the adjourned date in accordance with paragraph 12.

22. For the avoidance of doubt, save in the most exceptional of circumstances, no trial date is to be fixed unless the matter is ready for trial.

23. In every case where a date for PTR has been fixed and a party subsequently files a Notice of Application for Court Orders, the applicant must indicate on the

face of the application in bold text the date and time of the PTR. *See Appendix for example.*

24. Where a Notice of Application for Court Orders is filed in the circumstances of paragraph 23, the Registrar shall, in his or her discretion, and having regard to the urgency, the nature, timing and number of such applications, either fix the Notice of Application for Court Orders for hearing at the PTR or fix a separate date for the Notice of Application for Court Orders to be heard.
25. Where the Registrar exercises the discretion to fix a separate date for the hearing of the Notice of Application for Court Orders, the PTR date is to be vacated and the Judge before whom the Notice of Application for Court Orders is fixed is at liberty to treat that hearing as either a CMC or PTR as appropriate and make orders accordingly.
26. The Registrar is at liberty to issue Notices for PTR in respect of any claim for which a trial date is currently fixed in the Hilary Term 2023 and beyond.
27. Notices issued by the Registrar pursuant to paragraph 25 are to be given at least twenty-eight (28) days before the date fixed for the PTR.
28. Notices of a PTR may be sent by electronic mail and a “Pre-Trial Review List for Scheduling Trial Periods” shall be posted on the Supreme Court Website with the matters for which such notices have been issued.
29. At the “Pre-Trial Review for Scheduling Trial Periods” the Judge will determine the state of readiness for trial and shall not fix a trial date for any matter which is not ready for trial.
30. The Judge at the “Pre-Trial Review for Scheduling Trial Periods” is to conduct the hearing in the same manner provided for PTRs in this Practice Direction.
31. The “Pre-Trial Review for Scheduling Trial Periods” may be heard virtually in keeping with earlier Practice Directions and shall not be fixed for more than thirty (30) minutes.

TRIAL

32. The legal profession is reminded that an adjournment of trial will only be granted in exceptional circumstances and on the Judge being satisfied as to the necessity for an adjournment.

33. Where an adjournment of a trial is granted the Judge is at liberty to relist the matter for Mediation, CMC or PTR and consider making unless orders where there is evidence of non-compliance with previous orders.
34. Save in exceptional circumstances, no trial dates are to be fixed on the occasion of the adjournment of a trial but a new commencement period for the trial may be fixed if it is appropriate to do so.
35. For the avoidance of doubt, multiple adjournments at any stage of the litigation process will not be permitted and in that regard the Court is always at liberty to exercise all case management powers given to it by the CPR, including but not limited to the striking out of parties' cases for want of prosecution and/or in accordance with the provisions of Part 26.

Dated the 19th day of September 2021

Bryan Sykes
Bryan Sykes OJ, CD
Chief Justice

APPENDIX



NOTICE OF APPLICATION FOR COURT ORDERS

Form 7 (Rule 11.8(3))

IN THE SUPREMUUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO.

BETWEEN

CLAIMANT

AND

DEFENDANT

CMC/PTR DD/MM/YY Time: Duration:

Insert the details required by the Practice Direction