

CONSOLIDATED COUNTY COURT PRACTICE DIRECTION 2003

No 1 of 2003

26th June 2003, in force from 26 August 2003

INTRODUCTION

In order to achieve the maximum degree of uniformity of practice within a framework that enables individual courts to retain the necessary flexibility to respond to local conditions the Consolidated County Court Practice Direction No 1 of 1997 ([1997] 10 BNIL 66) was issued with the consent of the Council of HM County Court Judges and came into operation on 1 February 1998.

A number of alterations to the original Consolidated Practice Direction are necessary due to changes in the allocation of judges to various divisions and have been incorporated in this Practice Direction. The opportunity is being taken at the same time to confirm that these directions apply to all civil bills, whether in the county court or district judges' courts, and to incorporate for the first time the days and times when district judges will deal with interlocutory matters within their jurisdiction.

Although almost all the procedures prescribed by the original Consolidated Practice Direction remain unchanged and are re-enacted, the attention of practitioners is drawn to four changes:

in Section 6, Listing and Adjournments, at 3 (iii), the period within which parties may change a date (other than one fixed by a judge) notified to them by consent has been extended to 14 days; and

in Section 7 B, Building Disputes, all schedules must be lodged within two clear working days; and

in Section 7 C, Title Jurisdiction/Right of way cases, the plaintiff's affidavit must now be lodged at least four weeks, and the defendant(s) replying affidavit, at least two weeks, before the date fixed for hearing; and

Section 7 E re-enacts a previous direction relating to the assessment of damages in the district judges' courts.

This Practice Direction is issued with the consent of the County Court Judges' Civil Committee and comes into effect on Tuesday 26 August 2003, and The

Consolidated County Court Practice Direction No 1 of 1997 is revoked from that date.

The judge retains the power to issue supplementary directions as circumstances may require.

2. ALLOCATION OF BUSINESS AT BELFAST RECORDER'S COURT

In order that the business of Belfast Recorder's Court can be discharged as efficiently as possible individual judges will be designated from time to time to be responsible for the hearing of specific categories of cases and for control of the lists in those categories. Where the volume of business in any category requires the services of more than one judge, other judges will also be allocated to hear cases in that category. When a designated judge is unavailable the Recorder (or in his absence the senior judge available) will have overall responsibility for the business allocated to the designated judge.

The categories of business designated are as follows:

CATEGORY OF BUSINESS	DESIGNATED JUDGE
(i) Magistrates' Courts Appeals (except matrimonial appeals)	The Recorder
(ii) Youth Court Appeals	The Recorder
(iii) Criminal Damage and Criminal Injury Appeals	Judge Burgess [now retired]
(iv) Licensing applications	The Recorder
(v) Equity cases, minors' petitions and payments out	Judge Rodgers [now retired]
(vi) Family Matters (Children Order cases, matrimonial appeals and undefended divorces)	Judge Markey QC [now retired]
(vii) Civil bills and call-over of cases where certificates of readiness have not been lodged	The Recorder
(viii) Miscellaneous matters	The Recorder

3. PAYMENTS INTO COURT

If a party to an action makes a payment into court after 6 October 1997 which, if it had been paid directly to the other party to the action, would have constituted a compensation payment within the terms of the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 ("The Social Security Order") and the Social Security (Recovery of Benefits) Regulations (Northern Ireland) SR (NI) 1997/429] ("the Regulations") -

that payment shall be treated for the purpose of the Social Security Order as a compensation payment;

a current Certificate of Recoverable Benefits must be lodged in the appropriate court office at the time at which the payment into court is made; and

if the payment has been calculated in accordance with Article 10 of the Social Security Order, the compensator must inform in writing the injured party of that fact and must, in writing, indicate to him the date of payment and for which the calculation has been made.

(Note: The scheme applies to all relevant compensation payments without regard to the amount.)

4. INTERLOCUTORY APPLICATIONS

(1) Belfast Recorder's Court

All interlocutory and other applications in the appropriate category (subject to any specific direction by a judge) should be made in the first instance to the designated judge. Call-overs of cases in each category may be directed as necessary by the designated judge. During term time judges will sit to hear interlocutory applications at 10.00a.m. on the following days and on such further occasions as they may direct.

- | | | | |
|------|--------------------|---------------|--|
| (i) | The Recorder | Monday | (Civil bill matters) |
| (ii) | Judge Rodgers | Tuesday | (Equity matters, minors' petitions and payments out) |
| (ii) | The Recorder | Wednesda
y | (Civil bill matters) |
| (iv) | Judge Markey
QC | Thursday | (Family matters) |

(v) The Recorder Thursday (Miscellaneous applications)

(vi) The Recorder Friday (Civil bill matters)

District Judge's Business - Interlocutory applications will be dealt with on any day convenient to the court at 10.00a.m. Hire purchase and ejectment civil bills will be dealt with on the 1st and 2nd Wednesday of each month at 9.30a.m. Ancillary relief matters will be dealt with on the 5th Wednesday of any month or as convenient to the court.

(2) In all other divisions

interlocutory applications will be heard as follows:

Division of Londonderry

Except in emergencies applications will be heard in civil bill and equity matters as follows:

LONDONDERRY - The Recorder - each Wednesday at 9.30am

MAGHERAFELT - On Wednesdays and Fridays during the County Court Calendar week at 10.00am

District Judge's Business - Applications in respect of district judge's civil and ancillary relief matters at Londonderry and Magherafelt will be made to the district judge on any day on which the district judge is sitting to hear civil bills at 10.00am.

Division of Antrim

Applications will be dealt with on any day convenient to the court at 10.00a.m.

District Judge's Business - Applications will be dealt with on any day convenient to the court at 10.00a.m.

Division of Ards

Ex-parte applications are heard on any day convenient to the applicant. The same applies to contested applications provided that the day suggested by the applicant is convenient to the legal representatives of those opposing the application. If a day cannot be agreed the court will fix one. Such applications may be made during Crown Court sittings.

District Judge's Business - Applications will be dealt with on any day convenient to the court at 10.00a.m.

Division of Armagh and South Down

Interlocutory and other applications will be dealt with on any day on which the court is engaged in civil bills at 10.30a.m.

District Judge's Business - Applications will be dealt with on any day convenient to the court at 10.00a.m.

Division of Craigavon

Applications will be dealt with on any day convenient to the court at 10.00 am.

District Judge's Business - Applications will be dealt with on any day convenient to the court at 10.00a.m.

Division of Fermanagh and Tyrone

Interlocutory applications will be dealt with on any day on which the court is engaged in civil bills at 10.30a.m. or, in emergencies, on such dates as the chief clerk may direct.

District Judge's Business - Applications will be dealt with on any day convenient to the court at 10.30a.m.

(3) During vacations

urgent matters will continue to be heard in accordance with the Lord Chancellor's Direction contained in Northern Ireland Court Business 2/95 which provides that proceedings shall be heard at Belfast Recorder's Court if, on application to a judge nominated for that purpose, that judge is satisfied that:

the proceedings should be dealt with urgently; and

there is no other sitting of the county court at which those proceedings could be dealt with more conveniently as a matter of urgency.

5. CERTIFICATES OF READINESS NOT LODGED WITHIN SIX MONTHS

(1) (a) In the Belfast Recorder's Court on the 2nd and 4th Mondays of each month at 2.00 p.m. the Recorder will call over all ordinary civil bill cases in the Recorder's Court jurisdiction.

(b) District Judge Wells will call over all ordinary civil bill cases in the district judge's jurisdiction on the 2nd Wednesday of each month at 9.30 am

(2) (a) In all other divisions call-overs may be held on such dates and at such times as the assigned judge may direct for ordinary civil bill cases.

(b) For ordinary civil bills in the district judge's jurisdiction call-overs may be held on such dates and at such times as the assigned district judge may direct.

(3) At a call-over, unless a certificate has been lodged before the start of the call-over, solicitors for all parties must attend and the solicitor for the plaintiff must be in a position to state:

when the cause of action arose; and

when the civil bill was issued; and

why the certificate of readiness has not been lodged; and

when the case will be ready for hearing.

By Order 8 Rule 3(2) the judge may issue such directions for the future conduct of the proceedings as he considers appropriate. Depending upon the circumstances of each case, at such a call-over the court will consider whether it should either:

adjourn the matter to be mentioned at another date or to the next call-over to allow outstanding matters to be dealt with; or

order that the case be dismissed or the defence struck out unless such steps as the court directs are taken within a specified time;

the court may also order that the case be fixed for hearing on a particular date, in which case the solicitor for the plaintiff must lodge a certificate of readiness and the appropriate fee within 14 days of the call-over irrespective of any matters that may still be outstanding. If the certificate is not lodged, the case will remain listed for hearing on that date but the case will be listed for mention on an earlier date and the plaintiff's solicitor must attend to explain why a certificate of readiness has not been lodged.

6. LISTING AND ADJOURNMENTS

(1) Upon lodgment of the certificate of readiness the listing officer will fix a hearing date. If a certain date is known to be unsuitable for a particular reason, e.g. because of the non-availability of a witness, that should be stated in writing when the certificate of readiness is lodged and the listing officer will endeavour to take that into account when the date is fixed. If this information is not given, it will be assumed that any date is suitable.

(2) The hearing date will be communicated to the parties by way of a pro-forma "Notification of Listing".

(3) If the allocated date is unsuitable to any party, e.g. because of the unavailability of medical or other expert witnesses, that party shall, within fourteen days:

contact the listing officer and obtain an alternative date; and

consult with the other parties and seek to agree that alternative date; and

if an alternative date is agreed, inform the listing officer who will re-allocate the case to that date and notify the parties that the case has been adjourned to the date proposed by the parties.

(4) The matter will be listed before a judge:

if an alternative date is not agreed; or

if the date has been fixed by a judge; or

the case has been adjourned before (whether at call-over or in court)

In Belfast all applications will be made to the Recorder, unless the case has been allocated to another judge or the matter falls within one of the categories allocated to a designated judge, in which case the application must be made to that judge unless he is unavailable.

If the application for an adjournment comes with (4) above, prior to making the application, the applicant shall:

obtain from the listing officer a date or dates on which the matter may be re-listed; and

obtain from the court office a pro-forma in the form in Appendix I and attach to it a copy of the civil bill and complete the pro-forma as appropriate. The pro-forma must state whether the case has been adjourned before and if so, give every date upon which the case has been adjourned, whether at call-over or in court. The pro-forma will be passed to the judge in court and if the adjournment is granted, the pro-forma will be passed to the listing officer with the date of hearing endorsed thereon.

7. DOCUMENTS TO BE PRODUCED AT THE HEARING

A. INTERLOCUTORY APPLICATIONS

(1) It is the responsibility of the solicitor for the moving party to ensure that when an application is made copies of the civil bill or other originating process and all pleadings to date are lodged with the office at the time of the application.

(2) All interlocutory applications (except applications for an adjournment) must be supported by affidavit and the summons or notice of motion must set out the legislation and/or county court rule(s) relied upon. Where an injunction is sought, a draft order must be lodged by the applicant with the summons.

(3) Except in urgent cases, all interlocutory applications, together with supporting affidavits and exhibits, must be lodged with the office not later than two clear working days before the date upon which it is sought to have the application heard.

B. BUILDING DISPUTES

(1) A "Scott Schedule" following the precedent in Appendix II of this direction must be lodged. In the first instance, the parties' solicitors should instruct their respective experts to seek to produce an agreed schedule. If agreement cannot be reached, each party must lodge a schedule setting out the issues in dispute. All schedules must be lodged in court not later than two clear working days before the date fixed for hearing.

C. TITLE JURISDICTION/RIGHT OF WAY CASES

(1) The plaintiff must lodge an affidavit setting out the particulars of the claim and the grounds therefor and proper maps and/or photographs showing the area in dispute must be exhibited to the affidavit. The affidavit must be delivered to the court office and to the defendant(s) at least four weeks prior to the date fixed for hearing of the case. The defendant(s) must lodge a replying affidavit with the relevant exhibits with the court office and serve a copy upon the plaintiff at least two weeks before the date fixed for hearing.

D. TRIAL OF THE ACTION (INCLUDING CRIMINAL INJURY AND DAMAGE APPEALS AS APPROPRIATE)

(1) Before the court commences, the solicitor for each party must complete and hand to the court clerk a copy of a pro-forma available from the court clerk specifying the name of counsel and the solicitor or member of the solicitor's staff attending counsel.

(2) Where a party is a minor a copy (or photocopy) of the birth certificate must be handed into court at the start of the hearing. A short form certificate will be accepted. If the birth certificate is not produced then, unless the judge orders otherwise, the case will be adjourned and the costs of the day may be awarded against that party.

(3) It is the responsibility of the plaintiff's solicitor to hand to the judge at the beginning of the hearing:

a complete set of pleadings in the case, securely fastened together and arranged in proper order.

a complete set of photocopies of medical reports (and engineer's reports if appropriate) including the defendant's reports (if any), securely fastened together in one set and arranged in chronological sequence with the first report at the top, thereby ensuring that the plaintiff's and defendant's reports appear in their proper chronological sequence in the set. The originals of all reports must be in court to be produced if necessary but should not be handed to the judge without his direction as photocopies of reports may be retained by the judge after the hearing and not returned to the parties.

(4) Where photographs are to be put in evidence, it is the responsibility of each solicitor to have sufficient sets of identical photographs in court for the use of the judge, the witness and the opposite party or parties, with each set securely fastened together and legibly numbered on the front of each photograph. Black and white photocopies of photographs will not be accepted. Good quality colour photocopies of photographs will be accepted.

All documents produced to the court must be legible and free from markings or other extraneous matter wherever possible.

In any case to which the terms of the Social Security Order apply any court order for compensation (other than a Consent Order) must specify the amount of the compensation payment which is attributable to each of the heads of compensation that are listed in column 1 of Schedule 2 of the Social Security Order (e.g. loss of earnings – Article 17 of the Social Security Order). The parties must therefore ensure that the court has sufficient documentary evidence before it to enable it to complete this task.

In order to facilitate the administration of court business when a case has been settled, then:

(a) where a certificate of readiness has been lodged but a date not yet been fixed for hearing; or

(b) a date has been fixed for the hearing;

it is the duty of the plaintiff's solicitor to notify the listing officer of the settlement as soon as practicable by lodging a Form 98A by fax, post or personal attendance.

Personal attendance of solicitors or counsel is not necessary on the date of hearing provided that a Form 98A has been lodged with the court office prior to the date of hearing or with the court clerk at the hearing itself.

If the Form 98A is defective the solicitors for the parties will be required to appear before the judge and rectify any errors or omissions.

If a case has been settled but a Form 98A has not been completed, it is the responsibility of the plaintiff's solicitor to attend and to produce to the court a legible letter or fax from the solicitor(s) for the other party(ies) which accurately states all matters relevant to the settlement on the date of the hearing. If the letter or fax is incomplete the solicitor from whom it emanated may be required to appear in person before a judge.

Where the directions at (1), (3), (4), (5) and (6) above are not complied with, the judge may order the case to stand in the list or adjourn the case and order the party in default to bear the costs of the day.

ASSESSMENT OF DAMAGES

To facilitate the more efficient disposal of applications for assessment of damages after judgment in default, a party claiming witnesses' fees and expenses including medical reports, must produce to the district judge in court a schedule of all expenses claimed.