

IN THE HIGH COURT OF JUSTICE

Claim No:

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

[FINANCIAL LIST (ChD) / BUSINESS LIST (ChD) / COMPANY & INSOLVENCY LIST (ChD) / INTELLECTUAL PROPERTY LIST (ChD) / TRUSTS & PROBATE LIST (ChD) / COMPETITION LIST (ChD) / REVENUE LIST (ChD)]

District Judge [NAME]

[DATE]

BETWEEN:

AAAAA

Claimant

-and-

BBBBB

Defendant

ORDER

Warning: you must comply with the terms imposed upon you by this order otherwise your case is liable to be struck out or some other sanction imposed. If you cannot comply you are expected to make formal application to the court before any deadline imposed upon you expires.

Upon hearing counsel/the solicitor for the claimant and counsel/the solicitor for the defendant

[Where Extended Disclosure is sought]

And Upon (1) the Claimant/Defendant/Parties having completed the Disclosure Review Document and having agreed/sought to agree the List of Issues for Disclosure and (2) the Court reminding the Parties of their duties as to Disclosure including preservation of documents

IT IS ORDERED

Allocation

1. This claim is allocated to the multi track and is to be managed and tried in the Business

and Property Courts in Birmingham.

Costs management

(Agreed budgets)

2. The court has made a costs management order recording that the budgets of the [*insert party*] dated [] are agreed between the parties in the global sum of £[].

(Distinguishing between those parts of the budgeted costs approved or agreed)

3. The court has made costs management orders, pursuant to CPR 3.15(2)(a) and (b), as per the attached page(s) 1 of the [*insert parties*] precedent(s) H and/or as per the schedule annexed to this order. The phase(s) budgeted recording the agreement of the parties are those where the column is/are marked with *.

(Recording the extent, if any, to which incurred costs are agreed)

4. The court records agreement of the incurred costs in the following phase(s) as shown on page 1, of the attached Precedent H: [*insert phases*] and/or as shown on the schedule annexed to this order marked with *.

(As to filing and service of approved budgets)

5. Each party shall re-file and re-serve page 1 of the precedent H in the form approved or agreed with the revised figures by 4pm on []. *or*
6. CPR 3 PDE 7.7 is disapplied

(On application to revise budget)

7. The [*insert party*] shall file and serve, not less than 3 days before the hearing of the application to revise the costs budget, a copy budget with the “incurred columns” exactly as they were on the making of the most recent Costs Management Order and with any revision to the “estimated columns” said to be attributable to a significant development in **bold** type. The parties are reminded of the need to comply with CPR 3 PDE para. 7.6.

Alternative dispute resolution

8. At all stages the parties must consider settling this litigation by any means of alternative dispute resolution. Any party not engaging in any such means proposed by another must serve a witness statement giving reasons within 21 days of that proposal; such witness statement must not be shown to the trial judge until questions of costs arise.

Stay of proceedings

9. This claim be stayed until [DATE] for the parties to try to settle the dispute by alternative dispute resolution or other means. The claimant shall notify the Court in writing at the end of that period whether settlement has been reached.
10. The claimant on behalf of the parties shall at the same time lodge *either*:
 - (a) (if a settlement has been reached) a draft consent Order signed by all parties;
or
 - (b) (if no settlement has been reached) a statement of agreed directions signed by all parties or (in the absence of agreed directions) statements of the parties' respective proposed directions.
11. Any agreed extension of the stay must be in compliance with paragraph [47] below.
12. Any party has permission to apply in relation to the stay.

Financial dispute resolution appointment

13. The claim be listed before a Specialist Business and Property Courts District Judge for a without prejudice financial dispute resolution ('FDR') appointment in private on [DATE] with a time estimate of [2] hours commencing at [11.00 am] with Judicial pre-reading to take [1] hour.
14. The parties and their representatives shall attend one hour beforehand for the purpose of seeking to narrow issues and negotiation.
15. The FDR appointment must be treated as a meeting held for the purposes of discussion and negotiation. Parties attending the FDR appointment must use their best endeavours to reach agreement on all matters in issue between them.
16. The parties must personally attend the FDR appointment.
17. Not less than 7 days before the FDR appointment, the claimant must file with the court a bundle for the FDR appointment. Copies of all offers and proposals, and responses to them whether made wholly or partly without prejudice should be included in the bundle. The disclosure of offers to the court does not amount to a waiver of privilege.
18. At the conclusion of the FDR appointment, the court may make an appropriate consent order.

19. At the conclusion of the FDR appointment, any documents filed by a party for that purpose must be returned to that party and not retained on the court file and the court will not retain a record of the hearing.
20. The judge hearing the FDR appointment must have no further involvement with the claim, other than to conduct any further FDR appointment or to make a consent order or a further directions order.
21. [The costs of and caused by the FDR hearing shall be costs in the case] [There shall be no order for the costs of and caused by the FDR hearing]. In the event that any subsequent application is made for an adverse costs order arising in connection with the conduct of the FDR hearing, it shall be heard at the conclusion of the FDR hearing.

Disclosure of documents

Model A

22. The Claimant/Defendant/Parties shall by 4pm [days] disclose all known adverse documents in relation to the following issue(s) for disclosure:-

Model B

23. The Claimant/Defendant/Parties shall by 4pm [days] disclose to all other Parties (where, and to the extent, that they have not already done so by way of Initial Disclosure, and without limit as to quantity):-
 - (a) the key documents on which they have relied (expressly or otherwise) in support of the claims or defences advanced in their statement(s) of case;
 - (b) the key documents that are necessary to enable the other parties to understand the claim or defence they have to meet, and
 - (c) known adverse documents.

Model C

24. The Claimant/Defendant/Parties shall by 4pm [days] disclose the following documents/classes of documents:
 - (a)...
 - (b)...relating to the following Issue(s) for Disclosure:
 - (a)...
 - (b)...in accordance with the reasonable and proportionate requests [*insert numbered request*] in section 1B of the Disclosure Review Document or as defined by the court as set out below.

Model D

25. The Claimant/Defendant/Parties shall by 4pm [days] disclose documents which are likely to support or adversely affect its/his/her/their claim or that of another party in relation to the following Issue(s) for Disclosure:

(a)...

(b)...

The search for documents that have been ordered to be disclosed shall be reasonable and proportionate and limited to/as follows:

(a)...

(b)...

The Claimant/Defendant/ Parties [shall not/ shall¹] search for and disclose Narrative Documents.

Model E

26. The Claimant/Defendant/Parties shall by 4pm [days] disclose documents which are likely to support or adversely affect its/his/her/their claim or that of another party in relation to the following Issue(s) for Disclosure:

(a)...

(b)...

and/or which may lead to a train of enquiry which may then result in the identification of other documents for disclosure (because those other documents are likely to support or adversely affect the party's own claim or defence or that of another party in relation to one or more of the Issue(s) for Disclosure.

The scope of the reasonable and proportionate search which the Claimant/Defendant/ Parties must undertake is as follows:-

(a)...

(b)...

The Claimant/Defendant/Parties [must/need not] search for and disclose Narrative Documents.

Witnesses of fact

27. Each party shall serve on every other party the witness statements of all witnesses of fact to be relied upon by that party. There shall be simultaneous exchange of such statements by 4.00pm on [DATE]. Parties are reminded of CPR 32 PD 17-20 and CPR 22 PD 3A. The Court may refuse to admit as evidence witness statements which fail to comply with the requirements of the Civil Procedure Rules and cost sanctions may be imposed. Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.

Or

¹ Pursuant to PD 51U, paragraph 8.3, Model D, "If the order does not so specify, Narrative Documents should not be disclosed."

28. Each party shall serve on every other party the witness statements of all witnesses of fact to be relied upon by that party. Such statements shall be disclosed sequentially, the claimant by 4.00pm on [DATE] and the defendant by 4.00pm on [DATE]. Parties are reminded of CPR 32 PD 17-20 and CPR 22 PD 3A. The Court may refuse to admit as evidence witness statements which fail to comply with the requirements of the Civil Procedure Rules and cost sanctions may be imposed. Oral evidence will not be permitted at trial from a witness whose statement has not been served in accordance with this order or has been served late, except with permission from the Court.

29. Evidence of fact is limited to [NUMBER] witnesses on behalf of each party [and only relating to the following issues: [SPECIFY ISSUE(S)]].

30. Witness statements must not exceed [NUMBER] pages of A4 in length and have a font size of no less than 12point and line spacing of no less than 1.5 lines.

Further information

31. Each party shall serve any request for clarification or further information based on any document disclosed or statement served by another party by 14 days after disclosure or service. Any such request shall be dealt with within 14 days of service.

Expert evidence

32. No expert evidence being necessary, no party has permission to call or rely on expert evidence. *or*

33. In respect of each of the following disciplines the parties may rely on, as written evidence only, the report(s) (and replies to any questions) of one jointly instructed expert:

Discipline(s)	Name(s) of Expert
...	...
...	...

34. If the parties cannot agree by 4.00pm on [DATE] on the choice of expert, the payment of his fees, or any other matter relevant to his instructions they must apply to the court for further directions.

35. The joint expert(s) must report to the parties by 4.00pm on [DATE]. *and/or*

36. Each party has permission to rely on evidence from the following expert(s):-

Discipline	Claimant's expert	Defendant's expert	Oral [O] or Written [W]
...

provided the following steps have been complied with:

- (a) The parties shall exchange reports setting out the substance of any expert evidence on which they intend to rely. The exchange shall take place simultaneously by 4.00pm on [DATE]; and
- (b) Immediately after disclosure of all reports the parties shall agree the reports if possible but if they are not agreed shall instruct the experts (of like discipline if more than one) to confer and identify the issues between them and to reach agreement if possible. The experts shall then prepare for the parties a statement of the issues on which they agree/disagree with a summary of their reasons, and that statement shall be sent to the parties by 4.00pm on [DATE].

Questions to experts

37. The time for service of any question addressed to an expert instructed jointly or by another party is not later than 14 days after service of that expert's report (or 14 days of service of this order in the case of any report already disclosed). Any such question shall be answered within 14 days of service.

Trial

38. [There shall be a trial of the following preliminary issue(s): [SPECIFY PRELIMINARY ISSUE(S)]].

39. The trial of the [action] [preliminary issue(s)] shall be listed in a trial window of [MONTHS] commencing [DATE] with a time estimate of [NUMBER] hours/days [and suggested Judicial pre-reading time of [NUMBER] hours/days].

40. All parties must liaise forthwith and the claimant's solicitor, on behalf of all parties, shall by 4pm [DATE] days

(a) *[Only required if there is no recent and suitable summary on the file]*. File with the BPC section* an agreed, succinct, case summary, and schedule of outstanding issues. Where agreement is not possible the respective position of each party must be stated;

(b) File with the BPC section* dates of *joint availability* for the period covered by the trial window. In the absence of compliance, it will be assumed that there are no dates to avoid. The trial will then be fixed.

* In High Court cases the parties must use the E-Filing service to file all documents on CE file. Filing by email will not be accepted. In County Court cases the parties must file by email to *bpc.birmingham@justice.gov.uk*

41. The file will then be referred to the Business and Property Courts Chancery Specialist Circuit Judge for review and for such further directions, including allocation of the trial Judge, as may be required.

42. It is recorded that the parties consider that:
- (a) the trial is suitable for hearing before a [Business and Property Courts Specialist District Judge] [Business and Property Courts Chancery Specialist Circuit Judge] [High Court Judge].
 - (b) [the trial may if necessary be conducted by way of remote video hearing][the trial is not suitable for a remote hearing but requires a [partial][fully] face to face hearing. This is because]
 - (c) The time estimate is sufficient to allow for a hearing conducted as above.
43. Once a hearing date has been allocated the parties shall inform the Court in writing of any breach of any case management order which might prejudice the hearing proceeding on that date, the reason for the breach and how that breach is to be remedied. (Such a communication will not constitute an application to adjourn, which must be made in the appropriate way).
44. The parties must agree and the claimant must lodge at court **by post or DX only** at least 7 days before the trial (or any reading day allocated) a trial bundle(s) containing:
- (a) a succinct case summary;
 - (b) a chronology;
 - (c) a statement of issues to be determined by the Judge;
 - (d) a trial template (subject to the approval of the trial Judge); and
 - (e) a statement of what the Judge should read in advance of the trial.
45. Skeleton arguments must be filed not less than two clear working days before the trial/reading day. Skeleton arguments may be filed by email:
bpc.birmingham@justice.gov.uk
46. Pre-trial checklists (listing questionnaires) [are dispensed with (*where a pre trial review has been directed*)] or [are to be filed and served by 1pm on [*a date not less than 8 weeks before commencement of the trial window*]].

Pre trial review

(There must be a pre-trial review in all cases listed for a fully or partially face to face hearing while Covid restrictions on court availability remain to consider, in particular, whether the trial is still effective and a detailed timetable for witnesses and others attending it in person. This is to ensure that the maximum use of limited resources is made in the current health emergency.)

47. There be a pre-trial review before the trial Judge (if available) on [*a date from 8 to 10 weeks before the start of the trial*] with a time estimate of 1 hour. This hearing will be conducted as a telephone hearing which the legal representative for the claimant shall arrange.
48. Prior to the hearing the parties must liaise and seek to agree a succinct case summary, statement of issues, a list of the matters to be addressed at the hearing, and a trial template (subject to the approval of the trial Judge).
49. By 4.00pm 5 clear days before the hearing, the claimant must file these documents and a bundle of any relevant materials, which should include copies of any expert reports and any joint statement(s) if any party has applied for permission to call oral expert evidence.

Extending time limits for procedural steps by agreement, without reference

to the court

50. The parties may agree to extend any time period to which the proceedings may be subject (including any stay) for a period or periods of up to 3 months in total without formal application to the Court provided that:
 - (a) this does not affect the date given for any hearing;
 - (b) the parties file for approval by the Court a draft consent order setting out the proposed revised directions; and
 - (c) the date for completion of the final step shall not be extended beyond (i) 1 week before the pre trial review, if there is to be one or (ii) 3 weeks before the commencement of the trial, if there is not to be a pre trial review.

Settlement

51. Each party must inform the court immediately if the case is settled whether or not it is then possible to file a draft consent order to give effect to their agreement

Costs

52. Costs in the case

Additional directions

53. ...

ANNEX - Summary of agreed/approved costs budget of the [

insert party]

PHASE	INCURRED (marked with an * if agreed)	ESTIMATED (marked with an * if agreed rather than approved)	TOTAL
Pre-action		NOT APPLICABLE	
Issue/pleadings			
CMC		NOT APPLICABLE	
Disclosure			
Witness Statements			
Experts' Reports			
PTR			
Trial preparation			
Trial			
ADR (excluding mediation)			
Contingencies			
TOTAL			

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