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Date 17 March 2016
Publication Solicitors Journal
Type of publication Legal

SOLICITORS
JOURNAL

City partner and High Court judge encourage lawyers to use the Shorter and Flexible Trial Schemes

LEGAL NEWS | 17 March 2016

Initiatives have real value for high value business litigation, says Justice Birss

The shorter and flexible trials pilot schemes should be seen as a viable option to help businesses resolve cases in a timely and efficient way, legal experts have said.

Introduced last October in the Rolls Building Courts in London, the schemes - governed by practice direction (PD) 51N - allow parties to opt for an alternative to the normal more burdensome court procedures.



The shorter trials scheme (STS) aims for proceedings to be completed in a swift manner. A maximum four-day trial must take place within eight months of the case management conference (CMC) while judgment should be given within six weeks of the trial: costs are assessed summarily.

The flexible trials scheme (FTS) allows parties to have flexibility and choice when proposing streamlined directions best suited for their particular dispute. With the guide of a default procedure, a consensus can be reached to adapt the trial procedures, subject to court control.

Earlier this year, the first reported case on the shorter trials scheme demonstrated the courts' willingness to see businesses use these new procedures.

In delivering his judgment, Justice Birss clarified that the Rolls Building Courts have the power to transfer existing cases into, as well as out of the Scheme.

Speaking to SJ following a joint presentation at SJ Live 2016, Birss J said the Shorter and Flexible Trials Working Group, and the judges involved, believe the schemes have 'real value for litigation'.

'We are conscious of the fact some may not yet be aware that these new procedures are available,' Birss J. said. 'It is important to publicise to court users that the schemes exist, so that they are used.'

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'The example of the Intellectual Property and Enterprise Court (IPEC) has demonstrated that there is a demand for procedures which enable cases to be resolved in a timely and efficient way. The shorter trials scheme can deliver this.

Birss J believes the schemes will also be applicable to high-value disputes, which do not require enormous disclosure or extensive factual evidence.

Ed Crosse, a banking and commercial disputes partner at Simmons & Simmons LLP, who was a member of the Working Group and is the newly appointed President of the London Solicitors Litigation Association (LSLA), agreed.

'There will be some cases where there is no need for extensive disclosure, or where the factual issues are relatively narrow.

'These cases often do not justify the significant time and cost that a full-blown multi track case can entail. The shorter trials scheme offers a way through this,' said Crosse.

'In return for electing to use a streamlined process leading to a maximum four day trial, the courts will enable the case to be heard and determined within a year of issue, with the potential substantially to reduce costs. This is likely to be of particular interest to mid-range commercial cases.'

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