

PRACTICE DIRECTION AMENDMENTS

The new Practice Direction supplementing the Family Procedure Rules 2010 is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and, to the extent that it applies to proceedings to which section 5 of the Civil Procedure Act 1997 applies, by the Master of the Rolls under the powers similarly delegated to him by the Lord Chief Justice, and are approved by Simon Hughes, Minister of State for Justice and Civil Liberties, by the authority of the Lord Chancellor.

The new Practice Direction comes into force on 22nd April 2014.

Sir James Munby
The President of the Family Division

The Right Honourable The Lord Dyson
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Minister of State for Justice and Civil Liberties
Ministry of Justice

NEW PRACTICE DIRECTION 27A

For Practice Direction 27A (Family Proceedings: Court Bundles (universal practice to be applied in all courts other than the Family Proceedings Court)), there is substituted Practice Direction 27A as set out in the Schedule.

SCHEDULE

“PRACTICE DIRECTION 27A– FAMILY PROCEEDINGS: COURT BUNDLES (UNIVERSAL PRACTICE TO BE APPLIED IN THE HIGH COURT AND FAMILY COURT)

This Practice Direction supplements FPR Part 27

1.1 The President of the Family Division has issued this practice direction to achieve consistency across the country in the Family Court and the Family Division of the High Court in the preparation of court bundles and in respect of other related matters.

Application of the practice direction

2.1 Except as specified in paragraph 2.4, and subject to specific directions given in any particular case, the following practice applies to:

(a) all hearings before a judge sitting in the Family Division of the High Court wherever the court may be sitting; and

(b) all hearings in the Family Court.

2.2 “Hearing” includes all appearances before the court, whether with or without notice to other parties and whether for directions or for substantive relief.

2.3 This practice direction applies whether a bundle is being lodged for the first time or is being re-lodged for a further hearing (see paragraph 9.2).

2.4 This practice direction does not apply to the hearing of any urgent application if and to the extent that it is impossible to comply with it

Responsibility for the preparation of the bundle

3.1 A bundle for the use of the court at the hearing shall be provided by the party in the position of applicant at the hearing (or, if there are cross-applications, by the party whose application was first in time) or, if that person is a litigant in person, by the first listed respondent who is not a litigant in person. Where all the parties are litigants in person none of them shall, unless the court otherwise directs, be obliged to provide a bundle, but any bundle which they choose to lodge must be prepared and lodged so as to comply with this practice direction.

3.2 The party preparing the bundle shall paginate it using Arabic numbering throughout. If possible the contents of the bundle shall be agreed by all parties.

Contents of the bundle

4.1 The bundle shall contain copies of only those documents which are relevant to the hearing and which it is necessary for the court to read or which will actually be referred to during the hearing. In particular, copies of the following classes of

documents must not be included in the bundle unless specifically directed by the court:

- (a) correspondence (including letters of instruction to experts);
- (b) medical records (including hospital, GP and health visitor records);
- (c) bank and credit card statements and other financial records;
- (d) notes of contact visits;
- (e) foster carer logs;
- (f) social services files (with the exception of any assessment being relied on by any of the parties);
- (g) police disclosure.

This does not prevent the inclusion in the bundle of specific documents which it is necessary for the court to read or which will actually be referred to during the hearing.

4.2 The documents in the bundle shall be arranged in chronological order from the front of the bundle, paginated individually and consecutively (starting with page 1 and using Arabic numbering throughout), indexed and divided into separate sections (each section being separately paginated) as follows:

- (a) preliminary documents (see paragraph 4.3) and any other case management documents required by any other practice direction;
- (b) applications and orders;
- (c) statements and affidavits (which must be dated in the top right corner of the front page) but without exhibiting or duplicating documents referred to in para 4.1;
- (d) care plans (where appropriate);
- (e) experts' reports and other reports (including those of a guardian, children's guardian or litigation friend); and
- (f) other documents, divided into further sections as may be appropriate.

All statements, affidavits, care plans, experts' reports and other reports included in the bundle must be copies of originals which have been signed and dated.

4.3 At the commencement of the bundle there shall be inserted the following documents (the preliminary documents):

- (a) an up to date case summary of the background to the hearing confined to those matters which are relevant to the hearing and the management of the case and limited, if practicable, to four A4 pages;
- (b) a statement of the issue or issues to be determined (1) at that hearing and (2) at the final hearing;

- (c) a position statement by each party including a summary of the order or directions sought by that party (1) at that hearing and (2) at the final hearing;
- (d) an up to date chronology, if it is a final hearing or if the summary under (i) is insufficient;
- (e) skeleton arguments, if appropriate;
- (f) a list of essential reading for that hearing; and
- (g) the time estimate (see paragraph 10.1).

Copies of all authorities relied on must be contained in a separate composite bundle agreed between the advocates.

4.4 Each of the preliminary documents shall be as short and succinct as possible and shall state on the front page immediately below the heading the date when it was prepared and the date of the hearing for which it was prepared. Where proceedings relating to a child are being heard by magistrates the summary of the background shall be prepared in anonymised form, omitting the names and identifying information of every person referred to other than the parties' legal representatives, and stating the number of pages contained in the bundle. Identifying information can be contained in all other preliminary documents.

4.5 The summary of the background, statement of issues, chronology, position statement and any skeleton arguments shall be cross-referenced to the relevant pages of the bundle.

4.6 The summary of the background, statement of issues, chronology and reading list shall in the case of a final hearing, and shall so far as practicable in the case of any other hearing, each consist of a single document in a form agreed by all parties. Where the parties disagree as to the content the fact of their disagreement and their differing contentions shall be set out at the appropriate places in the document.

4.7 Where the nature of the hearing is such that a complete bundle of all documents is unnecessary, the bundle (which need not be repaginated) may comprise only those documents necessary for the hearing, but

- (a) the summary of the background must commence with a statement that the bundle is limited or incomplete; and
- (b) the bundle shall if reasonably practicable be in a form agreed by all parties.

4.8 Where the bundle is re-lodged in accordance with paragraph 9.2, before it is re-lodged:

- (a) the bundle shall be updated as appropriate; and
- (b) all superseded documents (and in particular all outdated summaries, statements of issues, chronologies, skeleton arguments and similar documents) shall be removed from the bundle.

Format of the bundle

5.1 Unless the court has specifically directed otherwise, being satisfied that such direction is necessary to enable the proceedings to be disposed of justly, the bundle shall be contained in one A4 size ring binder or lever arch file limited to no more than 350 sheets of A4 paper and 350 sides of text.

5.2 All documents in the bundle shall (a) be copied on one side of paper only, unless the court has specifically directed otherwise, and (b) be typed or printed in a font no smaller than 12 point and with 1½ or double spacing.

5.3 The ring binder or lever arch file shall have clearly marked on the front and the spine:

- (a) the title and number of the case;
- (b) the place where the case has been listed;
- (c) the hearing date and time;
- (d) if known, the name of the judge hearing the case; and
- (e) where in accordance with a direction of the court there is more than one ring binder or lever arch file, a distinguishing letter (A, B, C etc).

Timetable for preparing and lodging the bundle

6.1 The party preparing the bundle shall, whether or not the bundle has been agreed, provide a paginated index to all other parties not less than 4 working days before the hearing.

6.2 Where counsel is to be instructed at any hearing, a paginated bundle shall (if not already in counsel's possession) be delivered to counsel by the person instructing that counsel not less than 3 working days before the hearing.

6.3 The bundle (with the exception of the preliminary documents if and insofar as they are not then available) shall be lodged with the court not less than 2 working days before the hearing, or at such other time as may be specified by the court.

6.4 The preliminary documents shall be lodged with the court no later than 11 am on the day before the hearing and, where the hearing is before a judge of the High Court and the name of the judge is known, shall (with the exception of the authorities, which are to be lodged in hard copy and not sent by email) at the same time be sent by email to the judge's clerk.

Lodging the bundle

7.1 The bundle shall be lodged at the appropriate office. If the bundle is lodged in the wrong place the court may:

- (a) treat the bundle as having not been lodged; and
- (b) take the steps referred to in paragraph 12.

7.2 Unless the court has given some other direction as to where the bundle in any particular case is to be lodged (for example a direction that the bundle is to be lodged with the judge's clerk) the bundle shall be lodged:

(a) for hearings at the RCJ, in the office of the Clerk of the Rules, 1st Mezzanine (Rm 1M), Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand);

(b) for hearings at any other place, at such place as may be designated by the designated family judge responsible for that place and in default of any such designation at the court office for the place where the hearing is to take place.

7.3 Any bundle sent to the court by post, DX or courier shall be clearly addressed to the appropriate office and shall show the date and place of the hearing on the outside of any packaging as well as on the bundle itself.

7.4 Unless the court has given some other direction or paragraph 7.5 applies only one copy of the bundle shall be lodged with the court but the party who is responsible for lodging the bundle shall bring to court at each hearing at which oral evidence may be called a copy of the bundle for use by the witnesses.

7.5 In the case of a hearing listed before a bench of magistrates four copies of the bundle shall be lodged with the court.

7.6 In the case of hearings at the RCJ or at any other place where the designated family judge responsible for that place has directed that this paragraph shall apply, parties shall:

(a) if the bundle or preliminary documents are delivered personally, ensure that they obtain a receipt from the clerk accepting it or them; and

(b) if the bundle or preliminary documents are sent by post or DX, ensure that they obtain proof of posting or despatch.

The receipt (or proof of posting or despatch, as the case may be) shall be brought to court on the day of the hearing and must be produced to the court if requested. If the receipt (or proof of posting or despatch) cannot be produced to the court the judge may: (a) treat the bundle as having not been lodged; and (b) take the steps referred to in paragraph 12.

Lodging the bundle – additional requirements for Family Division or Family Court cases being heard at the RCJ

8.1 Bundles or preliminary documents delivered after 11 am on the day before the hearing may not be accepted by the Clerk of the Rules and if not shall be delivered:

(a) in a case where the hearing is before a judge of the High Court, directly to the clerk of the judge hearing the case;

(b) in a case where the hearing is before any other judge, to such place as may be specified by the Clerk of the Rules.

8.2 Upon learning before which judge a hearing is to take place, the clerk to counsel, or other advocate, representing the party in the position of applicant shall no later than 3 pm the day before the hearing:

- (a) in a case where the hearing is before a judge of the High Court, telephone the clerk of the judge hearing the case;
- (b) in a case where the hearing is before any other judge email the Clerk of the Rules at RCJ.familyhighcourt@hmcts.gsi.gov.uk;

to ascertain whether the judge has received the bundle (including the preliminary documents) and, if not, shall organise prompt delivery by the applicant's solicitor.

Removing and re-lodging the bundle

9.1 Unless either the court wishes to retain the bundle or specific alternative arrangements have been agreed with the court, the party responsible for the bundle shall, following completion of the hearing, retrieve the bundle from the court immediately or, if that is not practicable, collect it from the court within 5 working days. Bundles which are not collected in due time are liable to be destroyed without further notice.

9.2 The bundle shall be re-lodged for the next and any further hearings in accordance with the provisions of this practice direction and in a form which complies with para 4.7.

Time estimates

10.1 In every case a time estimate (which shall be inserted at the front of the bundle) shall be prepared which shall so far as practicable be agreed by all parties and shall:

- (a) specify separately: (i) the time estimated to be required for judicial pre-reading; and (ii) the time required for hearing all evidence and submissions; and (iii) the time estimated to be required for preparing and delivering judgment;
- (b) be prepared on the basis that before they give evidence all witnesses will have read all relevant filed statements and reports; and
- (c) take appropriate account of any additional time likely to be incurred by the use of interpreters or intermediaries.

10.2 Once a case has been listed, any change in time estimates shall be notified immediately by telephone (and then immediately confirmed in writing):

- (a) in the case of hearings in the RCJ, to the Clerk of the Rules; and
- (b) in the case of hearings elsewhere, to the relevant listing officer.

Taking cases out of the list

11.1 As soon as it becomes known that a hearing will no longer be effective, whether as a result of the parties reaching agreement or for any other reason, the parties and their representatives shall immediately notify the court by telephone and

email which shall be confirmed by letter. The letter, which shall wherever possible be a joint letter sent on behalf of all parties with their signatures applied or appended, shall include:

- (a) a short background summary of the case;
- (b) the written consent of each party who consents and, where a party does not consent, details of the steps which have been taken to obtain that party's consent and, where known, an explanation of why that consent has not been given;
- (c) a draft of the order being sought; and
- (d) enough information to enable the court to decide (i) whether to take the case out of the list and (ii) whether to make the proposed order.

Penalties for failure to comply with the practice direction

12.1 Failure to comply with any part of this practice direction may result in the judge removing the case from the list or putting the case further back in the list and may also result in a “wasted costs” order or some other adverse costs order.

Commencement of the practice direction and application of other practice directions

13.1 Subject to paragraph 13.2 this practice direction shall have effect from 22 April 2014.

13.2 Sub-paragraphs (a)-(c) and (e)-(g) of paragraph 4.1 and paragraphs 5.1 and 5.3(e) shall have effect from 31 July 2014. In the meantime paragraphs 5.1 and 5.3(e) shall have effect as if:

- (a) paragraph 5.1 read “The bundle shall be contained in one or more A4 size ring binders or lever arch files (each lever arch file being limited to no more than 350 pages).”; and
- (b) in paragraph 5.3(e) the words “in accordance with a direction of the court” were omitted.

14.1 This practice direction should where appropriate be read in conjunction with the Public Law Outline 2014 (PD12A) and the Child Arrangements Programme 2014 (PD12B). In particular, nothing in this practice direction is to be read as removing or altering any obligation to comply with the requirements of the Public Law Outline 2014 and the Child Arrangements Programme 2014.

This Practice Direction is issued:

- (a) in relation to family proceedings, by the President of the Family Division, as the nominee of the Lord Chief Justice, with the agreement of the Lord Chancellor; and
- (b) to the extent that it applies to proceedings to which section 5 of the Civil Procedure Act 1997 applies, by the Master of the Rolls as the nominee of the Lord Chief Justice, with the agreement of the Lord Chancellor.”