C. Particulars of Claim, Defence and Reply

C.1 Form and content

C.1.1 The following principles apply to all statements of case. They should, as far as possible, also be observed when drafting a Part 8 claim form.

(a) The document must be as concise as possible.

(b) The document must be set out in separate consecutively numbered paragraphs and sub-paragraphs.

(c) The document must deal with the case on a point by point basis to allow a point by point response. In particular, each separate cause of action, or defence, should be pleaded separately wherever possible.

(d) So far as possible each paragraph or sub-paragraph should contain no more than one allegation.

(e) Special care should be taken to set out (with proper particulars) only those factual allegations which are necessary to establish the cause of action, defence, or point of reply being advanced ("primary allegations"), to enable the other party to know what case it has to meet. Evidence should not be included, and a general factual narrative is neither required nor helpful (and is likely to contravene paragraphs (f), (h) and/or (k) below).

(f) Particulars of primary allegations should be stated as particulars and not appear as if they are primary allegations.

(g) A party wishing to advance a positive case must set that case out; and reasons must be set out for any denial of an allegation.

(h) Where particulars are given of any allegation or reasons are given for a denial, the allegation or denial should be stated first and the particulars or reasons for it listed one by one in separate numbered sub-paragraphs.

(i) Where they will assist:

(i) headings should be used; and

(ii) abbreviations and definitions should be established and used, and a glossary annexed.

(j) Contentious headings, abbreviations and definitions should not be used. Every effort should be made to ensure that headings, abbreviations and definitions are in a form that will enable them to be adopted without issue by the other parties.

(k) In rare cases where it is necessary to give lengthy particulars of an allegation, these should be set out in schedules or appendices.

(l) A response to particulars set out in a schedule should be set out in a corresponding schedule.

(m) In a rare case where it is necessary for the proper understanding of the statement of case to include substantial parts of a lengthy document the passages in question should be set out in a schedule rather than in the body of the statement of case.

(n) Contentious paraphrasing should be avoided.

(o) The document must be signed by the individual person or persons who drafted it, not, in the case of a solicitor, in the name of the firm alone.

C.1.2

(a) A statement of case (including schedules or appendices) should generally not exceed 25 pages (font minimum 12 point; 1.5 line spacing) and must never exceed 40 pages unless the Court has given permission for a longer document, in which case it must not be longer than the increased length for which permission has been given.

(b) The Court will only exceptionally give permission for a longer statement of case to be served; and will do so only where a party shows good reasons for doing so.

(c) Where permission is given the Court will generally require that a summary of the statement of case is also served.

(d) Any application to serve a statement of case longer than 40 pages should be made on documents (i.e. without a hearing) briefly stating the reasons for exceeding the 40 page limit, specifying the length of statement of case said to be necessary, but should not attach the draft statement of case for which permission is sought (unless there is some specific reason for doing so, which should then be explained). The application may be made without notice. It is not sufficient reason for a lengthy statement of case that the case is complex or of high value.

D. Case Management in the Commercial Court

D.1 Generally

D.1.1 All proceedings in the Commercial Court will be subject to management by the Court.

D.1.2 All proceedings in the Commercial Court are automatically allocated to the multi-track. Part 26 and the rules relating to allocation do not apply: rule 58.13(1).

D.1.3 Except for rule 29.3(2) (legal representatives to attend Case Management Conferences and pre-trial reviews) and rule 29.5 (variation of case management timetable), Part 29 does not apply to proceedings in the Commercial Court: rule 58.13(2).

D.1.4 Cases are not generally allocated to a particular Judge or Judges, but the Judge in Charge may appoint a designated Judge to a case, upon application or of the Court's own motion, where any or all of the following factors make it appropriate:

(a) the particular size of or complexity of the case,

(b) the fact that the case has the potential to give rise to numerous pre-trial applications,

(c) there is a likelihood that specific assignment will give rise to a substantial saving in costs,

(d) the same or similar issues arise in other cases,

(e) other case management considerations indicate that assignment to a specific Judge at the start of the case, or at some subsequent date, is appropriate.

D.1.5 An application for the appointment of a designated Judge must be made in writing to the Judge in Charge. Any such application should be made when first fixing a Case Management Conference, or (if later) promptly upon the grounds for the application becoming apparent.

D.1.6 If an order is made for appointment of a designated Judge:

(a) it may be for the appointment of a single designated Judge or a (primary) designated Judge and an identified alternate designated Judge;

(b) the designated Judge will preside at all subsequent pre-trial Case Management Conferences and other hearings, unless that Judge directs otherwise; and

(c) normally all applications in the case, other than an application for an interim payment or other application the hearing of which would require the Judge not to be the trial Judge, will be determined by the designated Judge, and that Judge will be the trial Judge.

D.1.7 In deciding whether to appoint a designated Judge, the Judge in Charge will consider, in accordance with the overriding objective, the implications for other users in other cases as well as the interests of the immediate parties.

D.1.8 Proceedings in the Financial List will have a designated Judge assigned to them at the time of the first Case Management Conference, unless otherwise ordered.

D.2 Key features of case management in the Commercial Court

D.2.1 Case management is governed by rule 58.13 and PD58 §10. For case management to be effective, it is important that parties consider carefully from an early stage, and throughout, what reasonable steps will be sufficient for a fair trial of the case (see E.5). In a normal commercial case commenced by a Part 7 claim form, case management will include the following key features:

(a) statements of case will be exchanged within fixed or monitored time periods;

(b) a case memorandum, a List of Common Ground and Issues and a case management bundle will be produced at an early point in the case. The parties will be expected to agree the case memorandum and the List of Common Ground and Issues;

(c) the case memorandum, List of Common Ground and Issues and case management bundle will be amended and updated or revised on a running basis throughout the life of the case and will be used by the Court at every stage of the case. In particular the List of Common Ground and Issues will be used as a tool to consider what factual and expert evidence is necessary and the scope of disclosure;

(d) the Court will approve the List of Common Ground and Issues and may require the further assistance of the parties and their legal representatives in order to do so;

(e) a mandatory Case Management Conference will be held shortly after statements of case have been served, if not before (and preceded by the parties filing case management information sheets identifying their views on the requirements of the case);

(f) at the Case Management Conference the Court will (as necessary) discuss the issues in the case and the requirements of the case with the advocates retained in the case. In a case where expert evidence is proposed the Court will consider whether to grant permission for that evidence and how that evidence should be controlled. The Court will set a pre-trial timetable and give any other directions as may be appropriate, including as to the use of information technology;

(g) at the first Case Management Conference, the Court will review and approve, amend or reject as may be appropriate the parties' proposals for disclosure;

(h) before the progress monitoring date the parties will report to the Court, using a progress monitoring information sheet, the extent of their compliance with the pre-trial timetable;

(i) on or shortly after the progress monitoring date a Judge may (without a hearing) consider progress and give such further directions as she or he thinks appropriate;

(j) if at the progress monitoring date all parties have indicated that they will be ready for trial, all parties will complete a pre-trial checklist;

(k) in appropriate cases the Case Management Conference will be restored and/or there will be a pre-trial review;

(l) the parties will be required to prepare a trial timetable for consideration by the Court;

(m) throughout the case there must be regular reviews of the estimated length (including reading time) of trial.

D.2.2 The Costs Management section of Part 3, with PD3D, applies in the Commercial Court (unless the claim was commenced before 22 April 2014) except where the claim is stated or valued in the claim form at £10 million or more or where the Court otherwise orders. Save in such cases the parties will be required to file and exchange costs budgets in accordance with rules 3.12 and 3.13. If there is a disagreement between the parties as to the value of the claim, the matter should be discussed between the parties with a view to resolving the point by agreement and otherwise raised with the Court at the first opportunity (which may be the first Case Management Conference); the requirements for filing and exchanging costs budgets will not apply until the matter is resolved.

D.2.3 Where Costs Management applies:

(a) unless an earlier costs management conference has been convened the issue of costs budgeting and whether a costs management order should be made will be considered at the first Case Management Conference;

(b) where costs budgets cannot be determined in advance of directions at the Case Management Conference, then a separate Costs Management Conference may be scheduled if the parties cannot agree a budget in the light of the Court's directions.

D.3 Fixing a Case Management Conference

D.3.1 A mandatory Case Management Conference should be fixed as mentioned in paragraphs (a) to (c) below (but see also D3.4), to be heard as promptly as possible while allowing time for the necessary preparatory steps, particularly as regards the directions to be sought in relation to disclosure. This will allow time for the preparation and service of any reply (see C.4).

(a) If proceedings have been started by service of a Part 7 claim form, the claimant must take steps to fix the date for the Case Management Conference with the Listing Office in co-operation with the other parties within 14 days of the date when all defendants who intend to file and serve a defence have done so: PD58 §10.2(a).

(b) If proceedings have been begun by service of a Part 8 claim form, the claimant must take steps to fix a date for the Case Management Conference with the Listing Office in co-operation with the other parties within 14 days of the date when all defendants who wish to serve evidence have done so: PD58 §10.2(b).

(c) If the proceedings have been transferred to the Commercial Court, the claimant must apply for a Case Management Conference within 14 days

of the date of the order transferring them, unless the Judge held, or gave directions for, a Case Management Conference when the Judge made the order transferring the proceedings: PD58 §10.3.

D.3.2 If the claimant fails to make an application as required by the rules, any other party may apply for a Case Management Conference: PD58 §10.5.

D.3.3 If the parties have not taken steps to fix the Case Management Conference as required, the Listing Office may inform the Judge in Charge, who may direct the Listing Office to fix a date without further reference to the parties.

D.3.4 Any party may apply to the Court in writing for an earlier Case Management Conference: PD58 §10.4. A request for an early Case Management Conference should be made in writing to the Judge in Charge, on notice to all other parties, giving reasons why it is said that an early case management hearing is necessary or would be appropriate.

D.3.5 The Court may fix a Case Management Conference at any time on its own initiative. If it does so, the Court will normally give at least 7 days' notice to the parties: PD58 §10.6. It may also consider, whenever there is a hearing in the case, whether some or all of the business that would normally be conducted at the Case Management Conference may fairly be dealt with at that hearing, to save costs.

D.3.6 A Case Management Conference may not be postponed or adjourned without an order of the Court.

D.4 Case memorandum

D.4.1 In order that the Judge conducting the Case Management Conference may be informed of the general nature of the case and the issues which are expected to arise, after service of the defence and any reply the solicitors and counsel for each party shall draft an agreed case memorandum. Experience has shown that this document is very useful to the Court.

D.4.2 The case memorandum should contain:

(a) a short and uncontroversial description of what the case is about; and

(b) a very short and uncontroversial summary of the material procedural history of the case.

D.4.3 Unless otherwise ordered, the solicitors for the claimant are to be responsible for producing and filing the case memorandum, and where appropriate for revising it.

D.4.4 The case memorandum should not refer to any application for an interim payment, to any order for an interim payment, to any voluntary interim payment, or to any payment or offer under Part 36 or Part 37.

(a) The purpose of the case memorandum is to help the Judge understand broadly what the case is about. It does not play any part in deciding issues at the trial. It is unnecessary, therefore, for parties to be unduly concerned about the precise terms in which it is drafted, provided it contains a reasonably fair and balanced description of the case. The parties must do their best to spend as little time as practicable in drafting and negotiating the wording of the memorandum and keep clearly in mind the need to limit costs.

(b) Accordingly, in most cases it should be possible for the parties to draft an agreed case memorandum. However, if it proves impossible to do so, the claimant must draft the case memorandum and send a copy to the defendant. The defendant may provide its comments to the Court (with a copy to the claimant) separately.

(c) The failure of the parties to agree a case memorandum is a matter which the Court may wish to take into account when dealing with the costs of the Case Management Conference.

D.5 List of Common Ground and Issues

D.5.1

(a) After service of the defence (and any reply), the solicitors and counsel for each party shall produce a list of the key issues in the case. The list should include the main issues of both fact and law. The list should identify the principal issues in a structured manner, such as by reference to headings or chapters. Long lists of detailed issues should be avoided, and sub-issues should be identified only when there is a specific purpose in doing so.

(b) The beginning section of the document must specify what is common ground between the parties. This is an important part of the process, intended to cut down the areas in dispute and save costs.

(c) The common ground section should include features of the factual matrix which are agreed to be relevant. Any disagreements as to the relevant features of the factual matrix should be addressed in the List of Common Ground and Issues.

D.5.2

(a) The List of Common Ground and Issues is intended to be a neutral document for use as a case management tool at all stages of the case by the parties and the Court. Neither party should attempt to draft the list in terms which advance one party's case over that of another.

(b) It is unnecessary, therefore, for parties to be unduly concerned about the precise terms in which the List of Common Ground and Issues is drafted, provided it presents the structure of the case in a reasonably fair and balanced way. Above all the parties must do their best to spend as little time as practicable in drafting and negotiating the wording of the List of Common Ground and Issues and keep clearly in mind the need to limit costs.

(c) Accordingly, in most cases it should be possible for the parties to draft an agreed List of Common Ground and Issues, and for that list to be concise. However, if it proves impossible to draft an agreed list, the claimant must draft the list and send a copy to the defendant. The defendant may provide its comments or mark amendments to the list and send a copy to the claimant.

D.5.3

(a) The List of Common Ground and Issues, at least in draft, is to be available to the Court prior to the first Case Management Conference.

(b) At the first Case Management Conference and any subsequent Case Management Conferences which take place, the Court will review the draft List of Common Ground and Issues with a view to its being refined and identifying the importance of any sub-issues and as required in order to manage the case. Accordingly, the List of Common Ground and Issues may be developed, by expansion or reduction as the case progresses.

D.5.4 The List of Common Ground and Issues will be used by the Court and the parties as a case management tool as the case progresses to determine such matters as the scope of disclosure and of factual and expert evidence and to consider whether issues should be determined summarily or preliminary issues should be determined.

D.5.5 The List of Common Ground and Issues is a tool for case management purposes and is not intended to supersede the pleadings which remain the primary source for each party's case. If at any stage of the proceedings, any question arises as to the accuracy of the List of Common Ground and Issues, it will be necessary to consult the statements of case, in order to determine what issues arise.

D.6 Case management bundle

Preparation

D.6.1 Before the Case Management Conference (see D.3 and D.7), a case management bundle should be prepared by the solicitors for the claimant: PD58 §10.8. It should be prepared in accordance with the guidance in Appendix 7.

Contents

D.6.2 The case management bundle should contain the documents listed below (where the documents have been created by the relevant time):

(a) the claim form;

(b) all statements of case (excluding schedules), except that, if a summary has been prepared, the bundle should contain the summary, not the full statement of case;

(c) the case memorandum (see D.4);

(d) the List of Common Ground and Issues (see D.5);

(e) the case management information sheets and the pre-trial timetable if one has already been established;

(f) the principal orders in the case;

(g) any agreement in writing made by the parties to disclose documents without making a list or any agreement in writing that disclosure (or inspection or both) shall take place in stages.

See generally PD58 §10.8.

D.6.3 Where PD 57AD applies (see E2.1), the case management bundle should also include the Disclosure Review Document, as completed by the parties for consideration at the Case Management Conference or (at later stages in the case) as approved by the Court at an earlier stage.

D.6.4 The case management bundle should not include a copy of any order for an interim payment.

Providing the case management bundle

D.6.5

(a) The case management bundle should be provided to the Listing Office at least 7 days before the (first) Case Management Conference (or earlier hearing at which the parties are represented and at which the business of the Case Management Conference may be transacted: see D3.5): see PD58 §10.8.

(b) The case management bundle (including the Case Memorandum and the List of Common Ground and Issues) must thereafter be provided at all subsequent hearings in the case and in accordance with the timetable requirements for providing bundles set out in this Guide.

(c) In a case in which costs management applies, budgets in the form of Precedent H under the CPR, and responses in the form of Precedent R, should be provided at the same time as the case management bundle and as part of it, or be added to it as soon as they become available.

(d) If exceptionally a hard copy case management bundle is used by the Court (see Appendix 7), then in general (unless the Court otherwise orders) it will be returned to the claimant's solicitors after each hearing.

Preparation and upkeep

D.6.6 The claimant (or other party responsible for the preparation and upkeep of the case management bundle), in consultation with the other parties, must revise and update the case management bundle as the case proceeds: PD58 §10.9.

D.7 Case Management Conference

Attendance at the Case Management Conference

D.7.1 Clients need not attend a Case Management Conference unless the Court otherwise orders. A representative who has conduct of the case must attend from each firm of solicitors instructed in the case. At least one of the advocates retained in the case on behalf of each party should also attend. Where a party has retained more than one advocate (e.g. leading and junior counsel), there is no requirement that all attend (e.g. if only limited matters remain in issue). The experience of the Court is that on many case management issues, junior advocates within a team may be well placed to assist the Court. Parties should consider in every case (a) whether attendance by the more (or most) senior advocates instructed in the case is reasonably required, and (b) whether, even where that is the position, at least some of the matters arising may appropriately be dealt with by the more (or most) junior advocates.

D.7.2

(a) The Case Management Conference is a very significant stage in the case. Although parties are encouraged to agree proposals for directions for the consideration of the Court, attendance may still be required even where all proposed directions are agreed. Where all proposed directions have been agreed, a proposed Consent Order should be filed as soon as possible, with an agreed covering letter setting out any particular reasons why the parties propose that attendance should not be required.

(b) Where all proposed directions are not agreed, the general rule in the Commercial Court is that there must be an oral hearing of the Case Management Conference.

(c) Exceptionally, it may be possible to dispense with an oral hearing even where all directions are not agreed if the issues are straightforward and the costs of an oral hearing cannot be justified.

(d) In such a case, if the parties wish to ask the Court to consider holding the Case Management Conference on documents, they must provide all the appropriate documents (see D7.2(e)) by no later than 12 noon on the Tuesday of the week in which the Case Management Conference is fixed for the Friday. That timing will be strictly enforced. If all the documents are not provided by that time, the Case Management Conference must be expected to go forward to an oral hearing. If the failure to provide the documents is due to the fault of one party and it is

for that reason an oral Case Management Conference takes place, that party will be at risk as to costs.

(e) Where a Case Management Conference is sought on documents the parties must provide the documents (which will include the case management bundle with the information sheets fully completed by each party), a draft Order and draft List of Common Ground and Issues (both agreed by the parties) for consideration by the Judge and a statement signed by each advocate:

(i) confirming that the parties have considered and discussed all the relevant issues and brought to the Court's attention anything that was unusual; and

(ii) setting out information about any steps that had been taken to resolve the dispute by NDR, any future plans for NDR or an explanation as to why NDR would not be appropriate.

(iii) giving a time estimate for the trial, inclusive of reading time likely to be required by the Judge.

(f) In the ordinary course of things it would be unlikely that any case involving expert evidence or preliminary issues would be suitable for a Case Management Conference on documents. In cases involving expert evidence, the Court is anxious to give particular scrutiny to that evidence, given the cost such evidence usually involves and the need to focus that evidence. In cases where preliminary issues are sought, the Court will need to examine the formulation of those issues and discuss whether they are appropriately taken separately.

Applications

D.7.3

(a) If by the time of the Case Management Conference a party wishes to apply for an order in respect of a matter not covered by the Questions on the case management information sheet, the application should be made at the Case Management Conference.

(b) In some cases notice of such an application may be given in the case management information sheet itself: see D7.4(c).

(c) In all other cases the applicant should ensure that an application notice and any supporting evidence are filed and served in time to enable the application to be heard at the Case Management Conference.

(d) Where one or more applications are heavy applications (as described in F.7) the preparation, timetabling and other arrangements for heavy applications will also apply.

Materials: case management information sheet, case management bundle, skeleton arguments and draft Order

D.7.4

(a) All parties attending a Case Management Conference must complete a case management information sheet: PD58 §10.7. A standard form of case management information sheet is set out in Appendix 2. The information sheet is intended to include reference to all applications which the parties would wish to make at a Case Management Conference.

(b) A completed case management information sheet must be provided by each party to the Court (and copied to all other parties) at least 7 days before the Case Management Conference.

(c) Applications not covered by the standard questions raised in the case management information sheet should be entered on the sheet. No other application notice is necessary if written evidence will not be involved and the 7 day notice given by entering the application on the information sheet will in all the circumstances be sufficient to enable all other parties to deal with the application.

D.7.5 The case management bundle must be provided to the Court at least 7 days before the Case Management Conference.

D.7.6 Skeleton arguments must be provided by all parties attending the Case Management Conference:

(a) Where the Case Management Conference will require oral argument of half a day (i.e. 2 hours 30 minutes) or less, skeleton arguments should be filed in accordance with the rules for ordinary applications in F6.5.

(b) Where the Case Management Conference (in its own right, ignoring any applications) will require oral argument lasting more than half a day, skeleton arguments should be filed in accordance with the rules for heavy applications in F7.5, with the Claimant's skeleton argument being served first followed by the Defendant's skeleton argument.

(c) Where only ordinary applications are to be heard at the Case Management Conference, the timetable in F6.5 should be adopted, even if the overall time required for oral argument exceeds half a day

but is less than a day. If the overall time required for oral argument on the ordinary applications and the Case Management Conference exceeds a day, the parties should seek to agree a bespoke timetable for filing of skeleton arguments and obtain the approval of the Court.

(d) Where a heavy application is to be heard at the Case Management Conference, skeleton arguments should be filed in accordance with the rules for heavy applications in F7.5.

(e) Where one or more applications are to be heard at the Case Management Conference, each party should normally serve a single skeleton argument which addresses both the applications and the general case management issues that are to be determined. Where applications and cross-applications have been made, judgment should be exercised to avoid a proliferation of skeleton arguments. In case of doubt, a bespoke timetable should be agreed and the approval of the Court sought for it.

D.7.7 J7.3 (provision of skeleton arguments to reporters and members of the public) applies to skeleton arguments for the Case Management Conference.

D.7.8 By 4 pm on the working day before any Case Management Conference is to be heard, the Claimant shall file with the Court an updated draft order setting out: (a) all orders and directions that are agreed, subject to the Court; and (b) all orders or directions proposed but not agreed, showing (where applicable) rival proposed wordings, with colour-coding, highlighting, footnotes or other convenient formatting to indicate which party or parties is or are contending for what.

The hearing

D.7.9 The Court's power to give directions at the Case Management Conference is to be found in rules 3.1 and 58.13(4). At the Case Management Conference the Judge will:

(a) discuss the issues in the case by reference to the draft List of Common Ground and Issues, and approve a List of Common Ground and Issues;

(b) discuss the requirements of the case (including disclosure), with the advocates retained in the case;

(c) fix the entire pre-trial timetable, or, if that is not practicable, fix as much of the pre-trial timetable as possible;

(d) give a direction for the trial date to be fixed promptly after the hearing, unless there is good reason to defer the fixing of the trial to a later stage in the case. That includes setting a time estimate for the trial (see D.16);

(e) consider with the parties their proposals for the use of information technology in the case, including its use at trial. In deciding whether and to what extent IT should be used in the case, including at trial, the Court will have regard to the financial resources of the parties and where those resources are unequal it will consider whether it is appropriate that one or more but not all of the parties should initially bear the cost subject to the Court's ultimate orders as to the overall costs of the case following judgment. Unless the Court can be satisfied that no unfairness would result from a party being excluded, or a party requests that it be excluded, all parties must have access to and an ability to use any IT systems proposed to be used in the case, including at trial;

(f) consider with the parties the question of document translation (see E.6), if there is likely to be a significant volume of documentary material not in English;

(g) in appropriate cases make an NDR order;

(h) in appropriate cases, consider whether the case should be retained in or be transferred out of the Commercial Court, and if retained whether it is suitable for the Shorter Trials Scheme or the Flexible Trials Scheme in the interests of reducing the length and cost of trial;

(i) expect to be informed, if known, whether there are or are likely to be other cases raising the same or similar issues, so that the potential for coordinated case management, if appropriate, can be considered.

D.7.10 At the Case Management Conference active consideration may be given, by reference to the List of Common Ground and Issues, to the possibility of the trial or summary determination of a preliminary issue or issues the resolution of which is likely to shorten the proceedings. An example is a relatively short question of law which can be tried without significant delay (though the implications of a possible appeal for the remainder of the case cannot be lost sight of). The Court may suggest the trial of a preliminary issue, but it will rarely make an order without the concurrence of at least one of the parties. Active consideration will also be given to whether any issues are suitable for summary determination pursuant to Part 24.

D.7.11

(a) Rules 3.1(2) and 58.13(4) enable the Court at the Case Management Conference to stay the proceedings while the parties try to settle the case by alternative means, including by a process of negotiated dispute resolution ("NDR"). The case management information sheet requires the parties to indicate whether a stay for such purposes is sought.

(b) In an appropriate case an NDR order may be made without a stay of proceedings. The parties should consider carefully whether it may be possible to provide for NDR in the pre-trial timetable without affecting the date of trial.

(c) Where a stay has been granted for a fixed period for the purposes of NDR the Court has power to extend it. If an extension of the stay is desired by all parties, a Judge will normally be prepared to deal with an application for such an extension if it is made before the expiry of the stay by letter from the legal representatives of one of the parties. The letter should confirm that all parties consent to the application.

(d) An extension will not normally be granted for more than four weeks unless clear reasons are given to justify a longer period, but more than one extension may be granted.

The pre-trial timetable

D.7.12 The pre-trial timetable will normally include:

(a) a progress monitoring date (see D.12); and

(b) a direction that the parties attend upon the Commercial Court Listing Office to obtain a fixed date for trial.

Variations to the pre-trial timetable

D.7.13

(a) The parties may agree minor variations to the time periods set out in the pre- trial timetable without the case needing to be brought back to the Court provided that the variation

(i) will not jeopardise the date fixed for trial;

(ii) does not relate to the progress monitoring date; and

(iii) does not provide for the completion after the progress monitoring date of any step which was previously scheduled to have been completed by that date.

(b) The Court should be informed in writing of any such agreement, together with a draft Consent Order for approval by the Court.

D.7.14 If in any case it becomes apparent that variations to the pre-trial timetable are required which do not fall within D7.13, the parties should apply to have the Case Management Conference reconvened immediately. The parties should not wait until the progress monitoring date.

D.8 Case Management Conference: Part 8 claims

D.8.1 In a case commenced by the issue of a Part 8 claim form, a Case Management Conference will normally take place on the first available date 6 weeks after service and filing of the defendant's evidence. At that Case Management Conference the Court will make such pre-trial directions as are necessary, adapting (where useful in the context of the particular claim) those of the case management procedures used for a claim commenced by the issue of a Part 7 claim form.

D.9 Case Management Conference: Part 20 claims (third party and similar proceedings)

D.9.1 Wherever possible, any party who intends to make a Part 20 claim should do so before the hearing of the Case Management Conference dealing with the main claim.

D.9.2 Where permission to make a Part 20 claim is required it should be sought at the Case Management Conference in the main claim.

D.9.3 If the Part 20 claim is confined to a counterclaim by a defendant against a claimant alone, the Court will give directions in the Part 20 claim at the Case Management Conference in the main claim.

D.9.4 If the Part 20 claim is not confined to a counterclaim by a defendant against a claimant alone, the Case Management Conference in the main claim will be reconvened on the first available date 6 weeks after service by the defendant of the new party or parties to the proceedings.

D.9.5 All parties to the proceedings (i.e. the parties to the main claim and the parties to the Part 20 claim) must attend the reconvened Case Management Conference. There will not be a separate Case Management Conference for the Part 20 claim alone.

D.9.6 In any case involving a Part 20 claim the Court will give case management directions at the same Case Management Conferences as it gives directions for the main claim: PD58 §12. The Court will therefore normally only give case management directions at hearings attended by all parties to the proceedings.

D.9.7 Where there is a prospect that a party to existing litigation may seek in due course to bring a related claim against other persons, but no Part 20 claim is begun by the party, the matter must be raised with the Court in order that the Court can express its view as to the proper use of its resources and on the efficient and economical conduct of the litigation.

D.10 Management throughout the case

D.10.1 The Court will continue to take an active role in the management of the case throughout its progress to trial. Parties should be ready at all times to provide the Court with such information and assistance as it may require for that purpose.

D.11 Progress monitoring

Fixing the progress monitoring date

D.11.1 The progress monitoring date will be fixed at the Case Management Conference and will normally be after the date in the pre-trial timetable for exchange of witness statements and expert reports.

Progress monitoring information sheet

D.11.2 At least 3 days (i.e. three clear days) before the progress monitoring date the parties must each send to the Court (with a copy to all other parties) a progress monitoring information sheet to inform the Court:

(a) whether they have complied with the pre-trial timetable, and if they have not, the respects in which they have not;

(b) whether they will be ready for a trial commencing on the fixed date specified in the pre-trial timetable, and if they will not be ready, why they will not be ready; and

(c) whether the length of trial as currently fixed is appropriate, too long, or not long enough, and if not long enough what solution is proposed.

D.11.3 A standard form of progress monitoring information sheet is set out in Appendix 2.

D.11.4 The progress monitoring information sheets are, where appropriate, referred to the Judge in Charge.

D.11.5 Upon considering the progress monitoring information sheets, the Court may, particularly if there has been significant non-compliance with the pre-trial timetable, direct that the Case Management Conference be reconvened or require further information to be sent to the Court.

D.12 Reconvening the Case Management Conference

D.12.1 In a complex case the pre-trial timetable may include provision for the Case Management Conference to be reconvened at an appropriate point. Further, if in the view of the Court the information given in the progress monitoring sheets justifies this course, the Court may direct that the Case Management Conference be reconvened.

D.12.2 At a reconvened hearing of the Case Management Conference the Court may make such orders and give such directions as it considers appropriate. Where there has been non-compliance with the pre-trial timetable, it may make such order for costs as is appropriate.

D.12.3 In advance of any reconvened Case Management Conference, an updated case management bundle should be provided in accordance with D7.5 and updated case management information sheets should be completed in accordance with D7.4 (unless the parties agree that there have been no material changes since case management information sheets were last filed).

D.13 Pre-trial checklist

D.13.1 Not later than three weeks before the date fixed for trial each party must send to the Listing Office (with a copy to all other parties) a completed checklist confirming final details for trial (a "pre-trial checklist") in the form set out in Appendix 2.

D.14 Further information

D.14.1

(a) If a party declines to provide further information requested under Part 18, the advocates who are to appear at the application for the parties concerned must communicate directly with each other in an attempt to reach agreement before any application is made to the Court.

(b) No application for an order that a party provide further information will normally be listed for hearing without prior written confirmation from the applicant that the above requirements have been complied with.

(c) The Court will only order further information to be provided if satisfied that the information requested is strictly necessary to understand another party's case.

D.14.2 Because it falls within the definition of a statement of case (see rule 2.3(1)) a response providing further information under Part 18 must be verified by a statement of truth.

D.15 Fixed trial dates

D.15.1 Most cases will be given fixed trial dates immediately after the pre-trial timetable has been set at the Case Management Conference.

D.15.2 A fixed date for trial is given on the understanding that if previous fixtures have been substantially underestimated or other urgent matters need to be heard, the trial may be delayed. Where such delay might cause particular inconvenience to witnesses or others involved in the trial, the Commercial Court Listing Office should be informed well in advance of the fixed date.

D.16 Estimates of length of trial

D.16.1 At the Case Management Conference an estimate will be made of the minimum and maximum lengths of the trial (inclusive of reading time). The estimate should be set having regard to the requirements of a trial timetable (J5.4(b)). The trial estimate will appear in the pre-trial timetable and will be the basis on which a date for trial will be fixed.

D.16.2 The Court examines with particular care longer estimates, and will wish to consider with the assistance of advocates whether in the case of particularly long trials all the issues in the trial should be heard at the same hearing: see J1.4.

D.16.3 A confirmed estimate of the minimum and maximum lengths of the trial, signed by the advocates who are to appear at the trial, should be attached to the pre-trial checklist.

D.16.4 The provisional estimate and (after it is given) the confirmed estimate must be kept under review by the advocates who are to appear at the trial. If at any stage an estimate needs to be revised, a signed revised estimate (whether agreed or not) should be submitted by the advocates to the Commercial Court Listing Office.

D.16.5 Accurate estimation of trial length is of great importance to the efficient functioning of the Court. The Court will be guided by, but will not necessarily accept, the estimates given by the parties.

D.17 Pre-Trial Review and trial timetable

D.17.1 The Court will order a pre-trial review in any case in which it considers that such a review will assist in ensuring that the parties are ready for trial and in planning the trial hearing itself.

D.17.2 A pre-trial review will normally take place between 8 and 2 weeks before the date fixed for trial, but might be earlier in particularly long or complex cases.

D.17.3 Whenever possible the pre-trial review will be conducted by the trial Judge. It should be attended by the advocates who are to appear at the trial: PD58 §11.2.

D.17.4 Before the pre-trial review or, if there is not to be one, before the start of the trial (see J.3), the parties must attempt to agree a timetable for the trial: see PD58 §11.3 and J5.4(b). The claimant must file a copy of the draft timetable at least two days before the date fixed for the pre-trial review or at least 7 days before the start of the trial if there is no pre-trial review; any differences of view should be clearly identified and briefly explained: PD58 §11.4. At the pre-trial review or before or at the beginning of the trial itself if there is no pre-trial review, the Judge may set a timetable for the trial and give such other directions for the conduct of the trial as they consider appropriate.

D.17.5 F7.2 applies also to pre-trial reviews.

D.18 Orders

D.18.1

(a) Except for orders made by the Court on its own initiative, and unless the Court otherwise orders, every judgment or order will be drawn up by the parties and rule 40.3 is modified accordingly: rule 58.15(1).

(b) Consent orders are to be drawn up in accordance with the procedure described in F.9.

(c) All other orders are to be drawn up in draft by the parties and should, as well as being marked clearly with the word “draft”:

(i) be dated in the draft with the date of the Judge’s decision;

(ii) bear the name of the Judge who made the order (after the designation "King's Bench Division, Commercial Court");

(iii) state (after the name of the Judge) whether the order was made in public, in private (see F1.6), or on paper.

The claimant is to have responsibility for drafting the order, unless it was made on the application of another party in which case that other party is to have the responsibility.

Orders for submission to Judges, or for sealing, will not be accepted without the information set out in sub-paragraphs (c)(i) to (iii) above.

(d) A copy of the draft must be provided to the Registry **within five days** of the decision of the Court reflected in the draft, together with a further copy in Word format. The party providing the draft must make clear whether it is agreed, identifying and explaining briefly (and neutrally) any points not agreed.

D.18.2 If the Court orders that an act be done by a certain date without specifying a time for compliance, the latest time for compliance is 4.30 p.m. on the day in question.

D.18.3 Orders that are required to be served must be served by the parties, unless the Court otherwise directs.

D.18.4 Where the Court makes an order under rule 5.4C(4) (limiting access to a copy of a statement of case) that fact should be displayed prominently on the front of the order and all parties must inform the Commercial Court Listing Office in writing of the fact and terms of the order forthwith. It is the responsibility of the parties to obtain confirmation that the order is properly entered in the Court's filing system, and fully to bring the order to the attention of a sufficiently senior member of the Court's staff. Thereafter whenever a party files with the Court a document which is subject to such order this should be stated on the front of the document and brought to the attention of the Commercial Court Listing Office at the time of filing.

D.18.5 Where the parties reach agreement that a case should be settled on the basis that the Court makes an Order for the proceedings to be stayed save for the purposes of enforcing agreed terms that are set out in a schedule or held separately (a "Tomlin" order), a copy of the agreed terms must be provided to the Court with the draft of the Order that a Judge is invited to make. If the Order will provide that the settlement terms will be held separately, a copy of those terms must be provided to the Court in confidence and, once a Judge has reached a decision on whether to make the Order, will be returned to the solicitors for the parties and/or removed from CE File. If the Order provides that the settlement terms are set out in a schedule to the Order or otherwise appended to or included in the Order, a copy of those terms must be kept with, and will form part of, the sealed Order (including on CE File, where they can be filed and marked as confidential if appropriate). The draft of the Order must be filed in two versions, neither dated: one must be signed on behalf of all parties; the other must be in Word format.

D.18.6 Where the parties seek to discontinue proceedings the following should be noted:

(a) It is not appropriate for orders to state that proceedings against one or more defendants are discontinued. The general position is that the Court has no power to order discontinuance: rule 38. Instead a claimant, in certain circumstances, is entitled to discontinue all or part of the claim.

(b) Parties considering a settlement under which use is made of that entitlement should give careful consideration to the whole of rule 38. Some, but not all, of the matters calling for consideration are referred to below.

(c) Rule 38.2(2) identifies circumstances where the Court's permission for discontinuance is required, including (a) where an interim injunction has been granted/undertakings have been given, (b) where a claimant has received an interim payment and the defendant that made the payment does not consent to discontinuance, and (c) where there is more than one claimant and the other claimants do not give written consent to discontinuance.

(d) Rule 38.6 is a default rule that the discontinuing claimant is liable for costs of the relevant defendant incurred on or before service of the notice of discontinuance. This will apply unless the Court orders otherwise.

(e) If agreement cannot be reached, applications under rule 38 should be made at a hearing unless the procedure for determination on documents in F.4 is followed.

(f) If permission to discontinue is needed and the relevant defendant consents to the grant of permission:

(i) A joint letter from both sides should explain why permission is needed, and why it is appropriate to grant permission. The letter should deal with all relevant matters including, but not limited to, identification of the specific factors which make it necessary to apply for permission, and confirmation that the parties have satisfied themselves that no other factors arise under rule 38.2. It should identify with precision what steps the parties propose to take, or what additional orders the parties seek, in order to ensure that those specific factors are adequately catered for. Thus, for example, if an injunction has been granted or an undertaking given, the proposed order might make additional provision for relevant injunction(s) and undertaking(s) to be discharged with effect from the date of the order.

(ii) If the parties consider that no additional provision is needed (for example because relevant injunctions or undertakings have already been discharged), an appropriate order might be along the following lines:

"Permission is granted to the claimant to discontinue the whole of the claim against the [relevant] defendant under [if appropriate] CPR 38.2(2)(a)(i) (claims in relation to which the Court has granted an interim injunction) [and/or] CPR 38.2(2)(a)(ii) (claims in relation to which a party has given an undertaking to the Court)."

(g) Where, rather than the default rule as to costs, the parties seek a consent order under which different provision would be made:

(i) If permission to discontinue is sought, then the joint letter sent for that purpose should draw the Court's attention to the precise order as to costs which is sought in the draft order accompanying the application.

(ii) If permission to discontinue is not sought, a joint letter from both sides should confirm that they have considered whether permission to discontinue is needed under rule 38.2 and have satisfied themselves that it is not.

(iii) If previous costs orders have been made, the parties should specifically discuss and agree what is to happen in relation to those orders. It will help to avoid problems later if the proposed order specifically identifies what is agreed upon.

(iv) Depending upon the circumstances, an appropriate order might be along the following lines:

"Upon the claimant giving notice of discontinuance [pursuant to the permission granted in paragraph [x] above] [as regards its claim against the [relevant] defendant], CPR 38.6(1) shall not apply. Instead [IF SO AGREED: the costs order(s) dated [•] shall not be enforced and] OR [, without prejudice to costs orders already made,] there shall be no order as to the remaining costs of these proceedings."

(h) The parties should also bear in mind that if there is a counterclaim or any other type of additional claim, and it is sought to bring this to an end by discontinuance, then notice of discontinuance would need to be given by the party making the additional claim, and any order sought from the Court may need modification to take account of this.

F.5.6

(a) Not later than five days before the date fixed for the hearing the applicant must provide the Listing Office with the applicant's current estimate of the reading and hearing time required to dispose of the application.

(b) If at any time either party considers that there is a material risk that the hearing of the application will exceed the time currently allowed it must inform the Listing Office immediately.

F.6 Ordinary applications

F.6.1 Applications to be listed for a hearing of half a day or less are regarded as "ordinary" applications (and see F5.4). Half a day means two and a half hours.

F.6.2 An ordinary application will generally be listed to be heard on a Friday if there is no urgency requiring it to be heard on a different day (and see F7.3).

F.6.3

(a) The timetable for ordinary applications is set out in PD58 §13.1.

(b) This timetable may be abridged or extended by agreement between the parties provided that any date fixed for the hearing of the application is not affected: PD58 §13.4. In appropriate cases, this timetable may be abridged by the Court.

F.6.4 An application bundle (see F.11) and the case management bundle must be provided to the Listing Office by 12 pm one clear day before the date fixed for the hearing together with a letter from the applicant's solicitors confirming or updating the time estimate for the hearing and the reading time required for the Judge. A "clear day" is explained by rule 2.8(3). The applicant must be willing to provide a copy of the application bundle and the case management bundle (and not simply an index) to other parties, at the cost (if there is a cost) of the receiving party, at the same time as those bundles are provided to the Court.

F.6.5 Skeleton arguments must be provided by all parties. These must be provided to the Listing Office and served on the advocates for all other parties to the application by 12 pm on the working day before the date fixed for the hearing. Advocates should note:

(a) Guidelines on the preparation of skeleton arguments are set out in Appendix 5.

(b) The skeleton should include an estimate of the reading time likely to be required by the Court and a suggested reading list, preferably agreed.

(c) Skeletons should not be more than 15 pages in length (font minimum 12 point; 1.5 line spacing). Any application to serve a longer skeleton should be made on documents to the Court briefly stating the reasons for exceeding the page limit and stating what number of pages is said to be necessary. Such application should be made sufficiently in advance of the deadline for service to enable the Court to rule on it before that deadline. The provisions as to the length of skeletons reflect the experience of the Court over time as to what is most useful.

F.6.6 Thus, for an application estimated for a hearing of half a day or less and due to be heard on a Friday:

(a) the application bundle and case management bundle must be provided by 12 pm on Wednesday; and

(b) skeleton arguments must be provided by 12 pm on Thursday.

F.6.7 If, exceptionally, and for reasons outside the reasonable control of the advocate a skeleton argument cannot be delivered to the Listing Office by 12 pm, the Clerk of the Judge hearing the application should be informed **before 12 pm**, and with accompanying reasons, and the skeleton argument should be delivered direct to that Clerk as soon as possible and in any event not later than 4 pm the day before the hearing.

F.6.8 Problems with providing bundles or skeleton arguments should be notified to the Commercial Court Listing Office as far in advance as possible. **If the application bundle, case management bundle or skeleton argument is not provided by the time specified, the application may be stood out of the list without further warning and there may be costs consequences.**

F.6.9 J7.3 (provision of skeleton arguments to reporters and members of the public) applies to skeleton arguments for an ordinary application.

F.7 Heavy applications

F.7.1 Applications to be listed for a hearing longer than half a day are regarded as "heavy" applications and will not be listed for hearing on a Friday.

F.7.2 The timetable for heavy applications is set out in PD58 §13.2.

F.7.3 An application bundle (see F.10) and case management bundle must be provided to the Listing Office by 4 pm two clear days before:

(a) the date fixed for the hearing; or

(b) the first day of the required reading period (F5.1).

A "clear day" is explained by rule 2.8(3).

The bundles should be provided together with a reading list and an estimate for the reading time likely to be required by the Court and a letter from the applicant's solicitors confirming or updating the time estimate for the hearing. The applicant must be willing to provide a copy of the application bundle and the case management bundle (and not simply an index) to other parties, at the cost (if there is a cost) of the receiving party, at the same time as those bundles are provided to the Court.

F.7.4 If (despite F5.1) the Listing Office has not identified the first day of reading time, parties should assume that the Judge's reading time for the hearing of a heavy application will be taken on the last working day prior to the hearing that is not a Friday. So, for example, unless the Listing Office has notified the parties otherwise, reading for a hearing on a Monday, or on a Tuesday after a Bank Holiday Monday, will be on the preceding Thursday (assuming that is a working day), not the preceding Friday.

F.7.5

(a) Guidelines on the preparation of skeleton arguments are set out in Appendix 5.

(b) Skeleton arguments must be provided to the Listing Office and served on the advocates for all other parties to the application as follows:

(i) applicant's skeleton argument by the same date and time as the bundles (F7.3);

(ii) respondent's skeleton argument by 4 pm on the next working day. If a longer interval is needed between the applicant's and respondent's skeleton arguments, the parties should propose a bespoke timetable for approval by the Court.

(c) Skeletons should not be more than 25 pages in length (font minimum 12 point; 1.5 line spacing). Any application to serve a longer skeleton should be made as described in F6.5(c).

(d) Both skeleton arguments should include a reading list and time estimate for the hearing, preferably agreed. The applicant's skeleton should also provide a chronology and dramatis personae, if warranted.

G. Negotiated Dispute Resolution ("NDR")

G.1 Generally

G.1.1 Parties who consider that NDR (referred to in previous editions of the Guide as 'ADR') might be an appropriate means of resolving the dispute or particular issues in the dispute may apply for directions at any stage.

G.1.2 Legal representatives in all cases should consider with their clients and the other parties concerned the possibility of attempting to resolve the dispute or particular issues by NDR and should ensure that their clients are fully informed as to the most cost effective means of resolving their dispute.

G.1.3 The Judges will in appropriate cases invite the parties to consider whether their dispute, or particular issues in it, could be resolved through NDR procedures (such as, but not confined to, mediation and conciliation). Where that is done, if appropriate, a hearing may be adjourned, or the proceedings may be stayed, for a specified period of time to allow for NDR, extending time as may be required for the taking of other steps in the case, including under existing orders. In an appropriate case, an NDR Order as set out in Appendix 3 may be made.

G.1.4 Where the Court seeks to assist the parties in agreeing an individual, panel or body to act as mediator, conciliator or other neutral NDR service provider, for example under paragraph 3 of an NDR Order in Appendix 3 form, that will not and must not be taken as involving recommendation.

G.1.5 Any order providing for NDR should include an order as to the costs that the parties may incur in using or attempting to use NDR, if the case is not settled. The order as to such costs is normally either (a) an order for costs in the case or (b) an order that each side shall bear its own costs.

G.1.6 In some cases it may be appropriate for an NDR order to be made following judgment if an application is made for permission to appeal, in which case the application for permission to appeal may be adjourned, to be restored if the matter is not settled through NDR procedures by a specified date.

G.1.7 If the Court considers that bilateral negotiations between the parties' respective legal representatives is likely to be a more cost-effective and productive route to settlement than other forms of NDR, the Court may set a date by which there is to be a meeting between the solicitors and representatives of their respective clients with authority to settle the case.

G.2 Early neutral evaluation

G.2.1 Early neutral evaluation ("ENE") is a without-prejudice, non-binding, evaluation of the merits of a dispute or of particular issues in dispute, given after time-limited consideration of core materials and having read or listened to concise argument. It is designed to take place in private at an early stage in a dispute.

G.2.2 At a Case Management Conference, the Court may explore whether ENE may assist in resolving the dispute.

G.2.3 ENE may be provided by appropriate third parties or, in an appropriate case if agreed by all parties, by one of the Judges of the Court. The approval of the Judge in Charge must be obtained before any ENE is undertaken by a Judge.

G.2.4 Where the evaluation is undertaken by a Judge, only brief, informal reasons will be provided, usually expressed orally.

G.2.5 Where ENE by a Judge of the Court is sought by the parties and approved by the Judge in Charge:

(a) The Judge in Charge will nominate the Judge who will conduct the ENE.

(b) The nominated Judge will give directions for the preparation and conduct of the ENE.

(c) The Judge who conducts the ENE will take no further part in the case, at any stage, unless the parties agree otherwise.

Appendix 2: Case Management Information Sheet, Progress Monitoring Information Sheet and Pre-Trial Checklist

Case Management Information Sheet

The information supplied should be printed in bold characters

Party filing information sheet:

Name of solicitors:

Name(s) of advocates for trial:

[Note: This Sheet should normally be completed with the involvement of the advocate(s) instructed for trial. If the claimant is a litigant in person this fact should be noted at the foot of the sheet and proposals made as to which party is to have responsibility for the preparation and upkeep of the case management bundle.]

Preliminary:

(1) (a) Is the case suitable for retention in the Commercial Court or should it be transferred to a different Court or List?

(b) If the case is retained in the Commercial Court, is it suitable for the Shorter Trials Scheme or the Flexible Trials Scheme in the interest of reducing the length and cost of trial?

(c) Are there, or are there likely in due course to be, any related proceedings between some or all of the parties to this Claim (e.g. a Part 20 claim)? Please give brief details.

(d) Are there, or are there likely to be, other cases in the Commercial Court or in any different Court or List in this jurisdiction raising the same or similar issues during the currency of this case?

(2) Please state whether the Case Management Conference (CMC) requires a High Court Judge or whether it is suitable for hearing by a Deputy High Court Judge.

(3) If costs budgeting and costs management is applicable, do you consider that this CMC is an appropriate time to deal with those questions? Is this agreed between the parties?

(4) Do you propose that IT is used (a) during the course of the proceedings prior to trial, (b) at trial? If so, what proposals do you make and are they agreed? If not, why not?

(5) Please indicate whether it is considered that the case should be allocated to a designated Judge. If so please give reasons for this view and write to the Judge in Charge of the Commercial Court in accordance with section D1.5 of the Commercial Court Guide.

Issues:

(6) Are amendments to or is information about any statement of case required? If yes, please give brief details of what is required.

(7) Can you make any additional admissions? If yes, please give brief details of the additional admissions.

(8) Are any of the issues in the case suitable for trial as preliminary issues, or should the trial of the case be split into separate parts?

Disclosure:

(9) Are you satisfied that proper Initial Disclosure has been given by all parties? If not, what are the concerns and what directions are sought from the Court?

(10) Do you, or does any other party, propose that there should be search-based Extended Disclosure (that is, Extended Disclosure using Model C, Model D or Model E) by one or more of the parties for one of more of the Issues for Disclosure? If so, has the Disclosure Review Document been completed and agreed, and, if not, why not?

(11) By what date can you give (a) Model B Extended Disclosure, if ordered, and/or (c) search-based Extended Disclosure, if ordered?

(12) What timing and method is appropriate for inspection of documents? Is this agreed?

Evidence:

(13) (a) On the evidence of how many witnesses of fact do you intend to rely at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.

(b) By what date can you serve signed witness statements?

(c) How many of these witnesses of fact do you intend to call to give oral evidence at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.

(d) Will interpreters be required for any witness? What arrangements may be necessary for the translation of witness statements?

(e) Do you wish any witness to give oral evidence remotely? Please give their name, or explain why this is not being done. Please state the country and city from which the witness will be asked to give evidence by remote means.

(14) (a) On what issues may expert evidence be required? Please identify both (i) the issue or issues in the case to resolve which will reasonably require there to be expert evidence (see rule 35.1) and (ii) for each proposed expert, the issue or issues within their field of expertise it is proposed they should be instructed to address.

(b) What is the estimated cost of the proposed expert evidence?

(c) Is this a case in which the use of a single joint expert might be suitable (see rule 35.7), or in which consideration should be given to what type of directions should be made in relation to proof of foreign law (see section H.3 of the Commercial Court Guide)?

(d) On the evidence of how many expert witnesses do you intend to rely at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done. Please identify each expert's field of expertise.

(e) By what date can you serve signed expert reports? Is this a case for sequential exchange of expert reports?

(f) When will the experts be available for a meeting or meetings of experts? Is this a case for the experts to meet before reports?

(g) How many of these expert witnesses do you intend to call to give oral evidence at trial (subject to the directions of the Court)? Please give their names, or explain why this is not being done.

(h) Will interpreters be required for any expert witness? What arrangements may be necessary for the translation of reports?

(i) Do you wish any expert witness to give oral evidence by remote means? Please give his or her name, or explain why this is not being done. Please state the country and city from which the witness will be asked to give evidence by remote means.

(j) Might this be a case for any expert evidence to be taken concurrently at trial?

Trial:

(15) What are the advocates' present estimates of the minimum and maximum lengths of the trial, including reading time (see section D16.1 and J5.4(c)) of the Commercial Court Guide)?

(16) What is the earliest date by which you believe you can be ready for trial?

(17) Is this a case in which a pre-trial review is likely to be useful?

(18) Please indicate whether it is considered that the case is unsuitable for trial by a Deputy High Court Judge rather than a High Court Judge. If the case is considered to be unsuitable for trial by a Deputy High Court Judge please give reasons for this view.

Resolution without trial:

(19) Is there any way in which the Court can assist the parties to resolve their dispute or particular issues in it without the need for a trial or a full trial?

(20) (a) Might some form of Negotiated Dispute Resolution ("NDR") procedure assist to resolve or narrow the dispute or particular issues in it?

(b) Has the question at (a) been considered between the client and legal representatives (including the advocate(s) retained)?

(c) Has the question at (a) been explored with the other parties in the case?

(d) Do you request that the case is adjourned while the parties try to settle the case by NDR or other means?

(e) Would an NDR order in the form of Appendix 3 to the Commercial Court Guide be appropriate?

(f) Are any other special directions needed to allow for NDR?

(21) Has Early Neutral Evaluation been considered?

Other matters:

(22) What other applications will you wish to make at the CMC?

(23) Should provision be made in the pre-trial timetable for any application or procedural step not otherwise dealt with above? If yes, please specify the application or procedural step. An application issued later that should have been, but was not, anticipated and mentioned here may be refused on that ground.

[Signature of solicitors]

Note: This information sheet must be filed with the Commercial Court Listing Office at least 7 days before the Case Management Conference (with a copy to all other parties): see section D7.4 of the Commercial Court Guide.

Progress Monitoring Information Sheet

The information supplied should be printed in bold characters

[SHORT TITLE OF CASE and FOLIO NUMBER]

Fixed trial date/provisional range of dates for trial specified in the pre-trial timetable:

Party filing information sheet:

Name of solicitors:

Name(s) of advocates for trial:

[Note: this information sheet should normally be completed with the involvement of the advocate(s) instructed for trial]

(1) Have you complied with the pre-trial timetable in all respects?

(2) If you have not complied, in what respects have you not complied?

(3) Will you be ready for a trial commencing on the fixed date (or, where applicable, within the provisional range of dates) specified in the pre-trial timetable?

(4) If you will not be ready, why will you not be ready?

(5) Is any application outstanding, or is any to be made, for directions in relation to the conduct of the trial? If so, provide brief details.

(6) What are the parties' current estimates of the minimum and maximum lengths of the trial (including reading time)? If the estimated maximum length of trial exceeds the current trial listing, what solution is proposed?

[Signature of solicitors]

Note: This information sheet must be filed with the Listing Office at least 3 days before the progress monitoring date (with a copy to all other parties): see D11.2 of the Commercial Court Guide.

Pre-Trial Checklist

The information supplied should be printed in bold characters

[SHORT TITLE OF CASE and FOLIO NUMBER]

a. Trial date:

b. Party filing checklist:

c. Name of solicitors:

d. Name(s) of advocates for trial:

[**Note:** this checklist should normally be completed with the involvement of the advocate(s) instructed for trial.]

1. Have you completed preparation of trial bundles in accordance with Appendix 7 to the Commercial Court Guide?

2. If not, when will the preparation of the trial bundles be completed?

3. Have directions previously been made for the use of IT at trial? If so, do they remain appropriate, or do you propose any departure from or amendment of those directions? If not, what (if any) directions do you propose should now be made, or why do you make no such proposal?

4. Which witnesses of fact do you intend to call?

5. (a) Which expert witness(es) do you intend to call (if directions for expert evidence have been given)?

   (b) Have the experts narrowed the areas of disputed expert opinion as far as possible?

   (c) If directions for expert evidence to be taken concurrently have not been made, will they be sought from the Judge at trial?

   (d) If this is or may be a case for expert evidence to be taken concurrently has there been a discussion between advocates as to the most suitable procedure: see H2.15 in the Commercial Court Guide?

6. Will an interpreter be required for any witness and if so, have any necessary directions already been given?

7. Have directions been given for any witness to give evidence by remote means? If so, have all necessary arrangements been made? If any witness of fact or expert witness you are calling will give evidence by remote means from a location outside England and Wales has any permission been

obtained that is required from a court or other authority in the jurisdiction where the witness will be, or is there no requirement for such permission in that jurisdiction?

8. What are the advocates' confirmed estimates of (i) the minimum and maximum lengths of the trial, including reading time and (ii) the reading time likely to be required for the Judge before any first sitting day? (A confirmed estimate of length signed by the advocates should be attached)?

9. What is your estimate of costs (i) already incurred and (ii) to be incurred up to the conclusion of trial?

[Signature of solicitors]

Appendix 3: Draft NDR Order

1. On or before [*] the parties shall exchange lists of 3 neutral individuals who are available to conduct Negotiated Dispute Resolution ("NDR") procedures in this case prior to [*]. Each party may [in addition] [in the alternative] provide a list identifying the constitution of one or more panels of neutral individuals who are available to conduct NDR procedures in this case prior to [*].

2. On or before [*] the parties shall in good faith endeavour to agree a neutral individual or panel from the lists so exchanged and provided.

3. Failing such agreement by [*] the Case Management Conference will be restored to enable the Court to facilitate agreement on a neutral individual or panel.

4. The parties shall take such serious steps as they may be advised to resolve their disputes by NDR procedures before the neutral individual or panel so chosen by no later than [*].

5. If the case is not finally settled, the parties shall inform the Court by letter prior to [disclosure of documents/exchange of witness statements/exchange of experts' reports] what steps towards NDR have been taken and (without prejudice to matters of privilege) why such steps have failed. If the parties have failed to initiate NDR procedures the Case Management Conference is to be restored for further consideration of the case.

6. [Costs].

Note: The term "NDR procedures" is used in the draft order to emphasise that (save where otherwise provided) the parties are free to use the type of procedure they regard as most suitable, be it conciliation, mediation, early neutral evaluation, non-binding arbitration etc.