

Protocol for the Commercial List, Technology & Construction List and Commercial Arbitration List

Issued on 15 October 2021.

This protocol replaces the protocol issued by the Court on 25 March 2020 in relation to directions hearings and the hearing of Motions in the Commercial List, Technology & Construction List and Commercial Arbitration List. [This protocol takes effect on 7 November 2021.](#)

Directions hearings will continue to be dealt with in accordance with the protocol issued on 25 March 2020 except that the extension of time for consent directions to be sent to the List Judge will no longer apply. The time at which the List closes will revert to 12 noon on Thursday as provided for in paragraph 24 of Practice Note SC Eq 3. Contested Motions will be conducted in open Court, unless all active parties to a Motion expressly agree that it is to be dealt with on the papers, or that any hearing should be remote, and notify the List Judge's Associate by 12 noon on the Thursday preceding the Friday on which the Motion is to be dealt with that such agreement has been reached.

Accordingly, the following procedures will apply in relation to matters in the directions lists:

- (1) Consent directions must be sent to the List Judge's Associate by 12.00 noon on the Thursday before the matter is listed for directions. Matters that are dealt with by consent before 12.00 noon on Thursday will not appear in the list.
- (2) Where there is no consent each active party must forward to the List Judge's Associate by 12.00 noon on the Thursday before the matter is listed for directions a brief position paper (not exceeding one page) identifying what is in dispute and their respective positions on it.
- (3) If a hearing date is requested a range of agreed hearing dates should be provided.
- (4) The Court will determine matters in dispute on the papers unless a hearing is necessary and appropriate. If a party considers a hearing to be necessary and appropriate, it should state this and given reasons why. If a hearing is to be held it is likely to be by audio link or video link. The parties will be notified of the relevant arrangements. The Court will endeavour to list all contested hearings on the Friday the matter is listed for directions, although that may not always be possible.

The following procedures will apply to Motions:

- (1) Prior to 12 noon on the Thursday preceding the Friday on which the Motion is returnable, each active party must:
 - (a) notify the Court of any consent orders to be made in relation to the Motion (such as orders adjourning the hearing of the Motion or disposing of it or directions to prepare the Motion for hearing);
 - (b) if all parties agree that the Motion should be dealt with on the papers or by remote hearing, notify the Court of that fact and provide the Court with any material they rely on in relation to the Motion, including an outline of written submissions not exceeding 3 pages;

- (c) in all other cases, provide the Court with (i) the names of the legal practitioners (not exceeding 3) who will appear on the Motion and their telephone and email addresses (other representatives of the parties may not attend Court except with leave of the presiding Judge given in accordance with the Court's COVID-19 protocol); (ii) confirmation that each legal practitioner appearing on the Motion has been fully vaccinated against COVID-19 (a legal practitioner who has not been fully vaccinated will not be entitled to attend court); (iii) a brief position paper not exceeding 1 page identifying what is in dispute and their respective positions in relation to it; (iv) any written submissions the party wishes to make on the Motion (written submissions are not required unless the Court has made a specific order to that effect).

(2) If a party does not comply with the requirements in (1), that party may be subject to sanctions including dismissal of the Motion or the making of the orders sought in the Motion without a hearing.

(3) All Motions not dealt with by consent (including Motions where the parties have agreed to a remote hearing or where there is a dispute about whether there should be a remote hearing or not) will be listed and called through in telephone hearings, commencing at 9.15 am on the Friday the Motion is to be dealt with, in 5 minute intervals to ascertain what is in dispute and the anticipated length of the Motion. Each Motion to be heard will be given a marking for an in-Court hearing that Friday or as soon as possible after that date. The marking will be given either at the time of the telephone hearing or by telephone or email immediately after the callover.

Enquiries are to be directed to the List Judge's Associate by email.