

Guidance by the commercial judges on dispensing with certain of the court's usual requirements

1. The principal purpose of Chapter 47 of the Rules of Court, Practice Note 1 of 2017 and of the guidance in 'Commercial Actions: Guidance for Practitioners' is to seek to ensure the effective and efficient conduct of commercial actions. In that regard, rule 47.5 provides that, subject to the provisions of Chapter 47, the procedure in a commercial action shall be such as the commercial judge shall order or direct.
2. The commercial judges recognise that there may be some commercial actions which do not merit full compliance with every aspect of the Guidance or in which standard procedural orders are not necessary or appropriate, whether for cost or other reasons. In such circumstances, the power in rule 47.5 can be used to allow more appropriate orders or directions to be given.
3. Without prejudice to that generality, and merely by way of example:
 - (a) While the standard approach of requiring certain written documents for particular hearings (eg notes of argument for a debate, or witness statements and written submissions for a proof) is likely to be appropriate in very many commercial actions, there may nonetheless be certain cases in which it is not necessary or appropriate to make such an order.
 - (b) The court appreciates that the preparation of electronic joint bundles can be time-consuming and expensive and that these factors may not always be outweighed by the benefits of having an electronic joint bundle.
 - (c) At a more specific level, it is recognised that it may not be possible, in respect of certain types of document, to comply with the requirement in paragraph 53 of the Guidance to have each document, when lodged electronically on a memory stick, put in the format of a text-searchable pdf file. Similarly, the requirement in the standard interlocutor that where witness statements make reference to productions they should be annotated with hyperlinks to the relevant document within the joint bundle may in some cases be unduly onerous or may cause disproportionate costs.
4. Accordingly, in any commercial action, if there are specific aspects of the Guidance that a party wishes to have dispensed with, or standard procedural orders that are considered to be unnecessary or inappropriate, the issue should be brought before the court. If not raised at a Preliminary Hearing, it should be raised in the Note of Proposals for Further Procedure lodged prior to the Procedural Hearing. In dealing with the matter, the court

will have regard to the full circumstances, including whether disproportionate costs are likely to be incurred or whether any technical or other difficulties exist.

5. This guidance has effect from 4 February 2019.

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