



# Young Professionals: Preparing for Trial – A Practical Guide

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# The 7 Ps...

PRIOR

PREPARATION  
&  
PLANNING

PREVENTS

P\*SS

POOR

PERFORMANCE



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# 1. CCMC - Directions

- **PITFALL** – PD39A doesn't exist anymore!!
- Starting point – CPR 39.5 and PD 32 para. 27

*“Unless the court orders otherwise, the claimant must file a trial bundle containing documents required by – (a) a relevant practice direction; and (b) any court order.*

*The claimant must file the trial bundle not more than 7 days and not less than 3 days before the start of the trial.”*

- Make sure the order contains the appropriate directions for the particular case – it's not a one size fits all.



- Who?
- When?
- How?
- What?



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Example...

“Not more than 14 nor less than 7 days before the first day of trial, the claimant shall lodge with the court and serve on the defendant an indexed, paginated and hyperlinked trial bundle. The parties shall endeavor to agree the contents of the trial bundle before it is lodged with the court. The trial bundle shall include a:

- (a) Case Summary;
- (b) Chronology;
- (c) List of Issues;
- (d) Suggested trial timetable.”



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## 2. Trial Bundle - Approach

A “*building up from nothing*” approach should be taken, not a “*thinning down from everything*” approach.

*White Winston Select Asset Funds LLC & Another v Mahon & Another*  
[2019] EWHC 1381 (Ch)



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# 3. Trial Bundle - Style

LOOKS REALLY ARE EVERYTHING!!

- Index

Detailed and accurate, but not a list of every document in the bundle.

- Pagination

Clear, consistent, and the same in hard/soft copy.

- Hyperlinked

Just make sure it works.

- Size/Number

Appropriate number and size of files. Is a core bundle required?

- Clarity/Brevity

If you can't read it, no one else can! Also avoid repetition.



## 4. Trial Bundle - Substance

1. Case summary/chronology/list of issues etc.
2. Claim Form and pleadings

**PITFALL** – Don't include old pleadings where amended pleadings exist.

3. Any Part 18 requests/responses
4. Relevant court orders

**PITFALL** – Don't include orders relating to administration.

5. All witness statements relied on
6. Any notices regarding evidence
7. Any expert reports
8. Any other relevant documents...





# PITFALLS:

- Don't include copies of old applications and statements.
- Don't include disclosure lists.
- Don't include allocation questionnaires.
- Don't include directions questionnaires.
- Don't include irrelevant correspondence.
- Don't include repeated email chains – keep it chronological and one email per page.
- Don't include long email anti-virus and confidentiality warnings etc.



## 5. Update references in witness statements



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## 6. Trial Bundle – How to reach agreement

- Start preparation early – 6-8 weeks before trial.
- Provide a draft index to the other side inviting comment/agreement.
- Don't be argumentative.
- Don't be demanding.
- Remember it is a collaborative process.
- Is there a need for a separate, unagreed bundle?



# 7. Keep offers and costs separate

This should be so obvious that it goes without saying!

Trial Judges don't want to see the following in the trial bundle...

**PITFALL**

- Without prejudice correspondence.
- Discussions regarding settlement.
- Correspondence between solicitors relating to costs points.
- Other irrelevant correspondence between solicitors.

Create a separate costs bundle.



## 8. Creation of Trial Documents

“Trial Documents” – Include case summary, chronology, cast list, list of issues, and suggested trial timetable.

- The claimant should instruct trial counsel to draft them.
- Alternatively, the claimant’s solicitor should draft them and then ask trial counsel to review.
- The claimant should provide copies of draft trial documents to the other side in advance of the deadline inviting comment/agreement.
- Remember trial documents are intended to be objective.



# 9. Skeleton Arguments

**PITFALL** – Failing to allow trial counsel adequate time to draft the skeleton.

- When contacting counsel's clerk to book them for trial, inform them of the deadline for the skeleton argument so it can be put in their diary.

**PITFALL** – Remember you're working with clear days!

- Provide counsel with a trial bundle as soon as you are able.
- If there is anything in particular that the client or their solicitor wishes to be addressed in the skeleton, inform counsel in their instructions – don't only raise it after the skeleton has been drafted.
- Remember that a skeleton is exactly what it says on the tin – the flesh will be added to the bones during submissions. Solicitors should provide suggested amendments to a draft skeleton where they feel necessary, but remember to trust counsel's judgement.
- Remember to prepare a joint bundle of authorities where required.



# 10. Remember to provide bundles for witnesses



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# 11. Comply with deadlines

If the party responsible for preparing the trial bundle doesn't actually prepare the bundle, the other side should seriously consider preparing it.

**PITFALL** – Please avoid the scattergun approach!



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# Thank you for listening!

Any further topics?



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## Questions from the end of the webinar

Q – Should pre-trial checklists be included in the trial bundle?

A – No. PTCs won't assist the Judge in deciding the case.

Q – Should all disclosed documents be included in the trial bundle, or just those documents that are inspected?

A – No, all disclosed documents should not be included in the trial bundle, and whether or not documents are included does not depend on whether or not they were inspected. The documents to be included are those that are exhibited to witness statements, those that are referred to in witness statements, and any further documents that the parties agree should be included. Only documents that are relevant and will assist the Judge in deciding the list of issues should be included.



Q – What should you do when dealing with a difficult litigant in person who wants to include without prejudice and/or irrelevant documents in the trial bundle?

A – If a litigant in person (or a difficult legal representative) wishes to include without prejudice and/or irrelevant documents in the trial bundle, you don't have to agree to them being included. Explain to the difficult individual why the documents should not be included, but if they still insist, don't simply concede and add them to the trial. Instead, create a separate unagreed bundle to be lodged at court with a cover letter/email succinctly explaining the contents of the bundle and the parties' positions in relation to it. Whether or not the documents should be included in the trial bundle (or as part of the trial bundle) can then be dealt with as a preliminary issue at the start of trial.

Q – What should you do in respect of the witness bundle when only an electronic trial bundle is to be lodged with the court?

A – If only an electronic trial bundle is to be lodged with the court, the court will not provide the witnesses at trial with a means to view the bundle electronically. You will need to either send a hard copy bundle to the court (clearly identifying it as the trial bundle for the witnesses), or simply take along a hard copy bundle on the first day of trial and hand it to the usher/clerk to be placed in the witness box prior to the start of trial.



If the trial is taking place remotely, you will need to email a soft copy of the bundle to each of your witnesses, and if the witness requests a hard copy, you will need to send a hard copy to their address. The other side should do the same for their witnesses.

Q – Should cost budgets and statements of cost be included in the trial bundle?

A – No. Cost documents will not assist the Judge in deciding the case. Cost documents, including relevant correspondence, should be put together in a separate costs bundle. The trial Judge should not read the costs bundle until the question of costs arises.

Q – Where should exhibits to witness statements go in the trial bundle?

A – Exhibits should either appear right after the relevant witness statement, or if you think it is more practical, exclude the exhibits from the statements of fact section of the bundle, and include the documents from the exhibits (without repetition) in the key/relevant documents section of the bundle.

Q – Do you need to inform the other side that you are going to update the references in the witness statements and obtain their agreement?

A – No. The person preparing the bundle should update the references, and when a copy of the bundle is provided to the other side, the other side can check them if they wish.

