



# BUNDLE OF JOY

Amey Welch offers some practical tips on preparing trial bundles

Preparing for trial can be daunting.

While the main focus in the mind of all litigators is that a case should be prepared as if it were going all the way to trial, the reality is that far more cases now settle than do go to trial.

As a result, it is not uncommon for litigators to be in practice for several years before stepping through the doors of court for a trial - and following that, it might be a further several years before they do it again.

Therefore, trial preparation is not an area in which all lawyers, particularly those at the junior end of the profession, are well experienced.

Litigators should begin with the end in mind. Trial is the coming together of the hours of hard work spent throughout the lifetime of a case.

By the time you are preparing for trial, you should have already considered the issues that will need to be proved, and the evidence required to support your client's case.

Therefore, the only thing left to do is present it before the court.

A key part of presenting your case is the trial bundle. Amendments to the CPR came into force on 6 April 2019. This - together with the recent Supreme Court trial bundle saga in the prorogation of parliament appeals - provides a timely opportunity for litigators to revisit the rules in respect of the preparation of trial bundles, as well as an opportunity to share some tips.

When it comes to trial bundles, a good trial bundle cannot win a bad case, but a badly presented bundle can damage a good case.

It only takes a quick search of case law to see that trial bundles have received a large amount of criticism from the courts over the years.

Preparing trial bundles in a logical and organised manner that complies with the rules is an essential skill for all litigators.

In this article, I intend to provide a summary of the points which need to be considered when preparing your next trial bundle.

## What is the trial bundle?

The trial bundle is a bundle of documents upon which the parties to an action intend to rely during trial.

It should include all the relevant documents to a case.

CPR 39.5 makes clear that it is the claimant's responsibility to prepare the trial bundle, while paragraph 27.12 CPR PD 32 states that the parties are required to attempt to agree the content of the trial bundle where possible.

Bearing this in mind well in advance of the trial is important.

## The index

When it comes to preparing trial bundles, the first thing to consider is the index. Under paragraph 27.12 CPR Practice Direction 32, parties are required to attempt to agree the content of the trial bundle where possible.

Sending the index to the other side in good time, say six weeks before the trial is due to start, allows

time for discussions around the bundle to take place with a view to agreeing it.

Sending the index can also provide an opportunity to scope out whether any further offers are likely to be made.

For example, when sending the draft index, you can request the confirmation that you proceed to prepare the bundles.

The other side may follow this up with an offer to settle the case, or alternatively, if the response is agreement for you to precede, then you know it is unlikely that any further offers are going to be made.

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### *A good trial bundle cannot win a bad case, but a badly presented bundle can damage a good case*

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As a side note here, it should be noted that, should an offer be made or received at this stage which leads to settlement, CPR Practice Direction 39.10 now requires the parties to notify the listing officer of settlement immediately; and if an order is drawn up, a copy of the order should be filed with the listing officer.

Returning to bundles, the index should include a clear description of each document or category of documents, together with the date or date range of documents.

Subheadings can be used to ensure the index is clear. In addition, page numbers must be included, but this is something that can be added later once the index has been agreed.

If the parties are unable to agree the index, paragraph 27.12 CPR Practice Direction 32 now requires the parties to file a summary of the points which are not agreed along with the trial bundle.

#### **What to include?**

When considering what needs to be included in the trial bundle, reference ought to be made to the CPR.

New rules came into force on 6 April 2019, including movement of the rules relating to the preparation

of bundles; being moved from CPR Practice Direction 39A to CPR Practice Direction 32.

In particular, paragraph 27.5 CPR Practice Direction 32 states that unless the court orders otherwise, the bundle should include:

- The claim form and statement of case
- A case summary and / or chronology where appropriate
- Requests for further information and response to such requests
- All witness statements to be relied on as evidence
- Any witness summaries
- Any notices of intention to rely on hearsay evidence under CPR 32.2 (4)
- Any notices of intention to rely on evidence (such as a plan, photograph and so forth) under CPR 34.3 which is not:
  - o Contained in a witness statement, affidavit or expert report
  - o Being given orally at trial
  - o Hearsay evidence under CPR 33.2
- Any medical reports and responses to them
- Any expert report and responses to them
- Any order giving directions as to the conduct of trial and
- Any other necessary documents.

In light of the above, documents can be arranged in the following order:

- Pleadings / statements of case
- A case summary and / or chronology
- Witness statements
- Expert reports
- Court orders giving directions
- Notices relating to evidence
- Other necessary documents, for example:
  - The schedule of loss and counter schedule
  - Source documents
  - Lists of documents

- Documents relating to finding and pre-action disclosure.

Dealing with each of these in further detail:

#### **Pleadings**

This section will include the statements of case drafted by the parties, for example the claim form, particulars of claim and defence.

Note here that orders relating to trial directions are included under their own heading. When arranging the bundle statements of case ought to be filed in chronological order.

#### **The case summary**

It is the claimant's responsibility to prepare the case summary.

Again, a copy should be sent to the other side in advance for their agreement.

Case summaries should be a brief synopsis of the case designed to assist the court in understanding the questions before it.

They should not normally exceed 500 words in length and should include a brief chronology of the case, identify the issues between the parties and those which are agreed, together with highlighting the key evidence before the court.

Where referring to key documents, reference should be made to where those documents can be found, by citing the relevant page numbers of the bundle.

The rules relating to case summaries are contained in paragraph 5.7 CPR Practice Direction 29.

#### **Witness statements**

When it comes to the layout of witness statements within the index, a sensible format can be for liability statements to lead, followed by quantum statements.

Following this, witness statements can be split into claimant and defendant statements, with the claimant's statement being listed first, followed by each witness in alphabetical order by surname.

Alternatively, you may want to organise the statements in order of importance.

Where a witness has prepared more than one statement, it would seem sensible to keep these together

in chronological order. Defendant statements can then follow similarly.

**Expert evidence**

In terms of organising expert evidence, you may want to consider including medical evidence before non-medical evidence.

It is also useful to try and rank the expert evidence in order of importance, so lead medical experts are listed first.

This can then be followed by quantum evidence, again ordered by importance. Supplemental statements should follow immediately behind reports of the same expert.

**Documentary evidence**

This section will include all documentary evidence relating to the case, for example medical records, case management records and rehabilitation records.

Where the trial bundle is particularly large, you may want to split these into their own volumes.

**Preparation of the trial bundle**

Once the index has been finalised, you can begin to prepare the bundle.

You should aim to be doing this around 4 weeks before trial, as this will give you a week to prepare, organise, paginate and make copies of the bundle so that a copy of the finalised bundle can be sent to counsel with instructions.

*Note:* It is best to first prepare a master paginated bundle before making further copies.

Paragraph 27, CPR Practice Direction 32 sets out the requirements relating to trial bundles and includes:

- The bundle should be paginated continuously throughout (27.8)
- The bundle should be indexed with a description of each document and the page number (27.8)
- Trial bundles more than 100 pages long should include numbered dividers between groups of documents (27.8)
- Bundles should be contained in a ring binder or lever arch file. Where the bundle exceeds one lever-arch file, the files should be clearly distinguishable (27.9)
- Where there are numerous bundles, a core bundle should be prepared containing the core documents essential to the proceedings, with reference to the supplementary documents in the other bundles (27.9)
- For convenience, expert reports may be contained in a separate bundle and cross-referenced in the main bundle (27.10)
- If a document within the bundle is illegible, a typed copy should be included next to it and be cross-referenced (27.11)
- The bundle should be agreed when possible, and where it is not possible to agree the contents of the bundle, a summary of the points on which the parties are unable to agree should be included (27.12)
- The party filing the bundle should supply identical bundles to all parties, for example copies for the claimant, defendant, counsel, court and a copy for the witness box (27.13)
- Unless the court otherwise directs, contemporaneous

documents in the trial bundle should be assembled as a single unit in chronological order of creation (27.14)

In addition to the above, from 6 April 2019, paragraph 27.15 CPR Practice Direction 32 now states that unless the court otherwise directs, document in the trial bundle should be copied double-sided.

**Organising the bundle**

In terms of organising the bundle, the following can be taken from the rules:

The index should be placed at the front of the bundle.

When it comes to tabulation, page dividers ought to be used to separate each section of the bundle, for example pleadings, witness statements, and expert evidence. This makes the bundle easier to navigate through, and if any further documents need to be added and numbered, this can be done without changing the overall numbering.

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The trial bundle should be paginated in a way that is clearly identifiable and in accordance with the index. Note should be made here that it is best to leave pagination until the trial bundle index has been finalised with the other side. Attempting to paginate the trial bundle before this can lead to repeat pagination as things change.

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While there is no guidance as to where on the page documents ought to be paginated, bearing in mind that trial bundles are now expected to be double-sided unless the court orders otherwise, pagination in the middle bottom of each page seems most appropriate.

Also, do not forget to check the bundle for any photographs which may need to be paginated in a different colour to ensure the page numbering is legible, as some photographs may result in pagination being printed onto a dark background, leaving the page numbering difficult to decipher.

If additional documents are added, paginate them with additional numbering rather than letters. For example, 55.1 rather than 55.a.

In terms of overall filing, the paragraph 27.9 CPR Practice Direction 32 makes clear that the files to the trial bundle should be clearly distinguishable, and refers to the use of different colours or letters for files to make them easy to distinguish.

Also, it is important to remember here that lever-arch files are renowned for breaking when overfilled. To avoid this, try limiting the number of pages in each file to 350 - and do not forget

to check that the files are still in good working order before delivering them to the court.

In addition to the above, it is useful to use labelling to ensure each file is easily identifiable.

The general idea is that labels should enable the judge, witnesses and counsel to quickly identify which file is being referred to at a quick glance.

In order to assist with this, labels should be placed front of the file including the name of the case, together with the name of the file, while spine labels can be used to identify the bundle by volume letter in large font, so it can be seen easily; and square stickers can be stuck into the inside left cover of each file so this can be seen when the file is open, rather than having to check the spine.

#### **Sending the trial bundle to the Court and the other side**

Once the bundle has been prepared, the last thing to do is to send the trial bundle. This needs to be sent not more than seven days and not less than three days before trial (CPR 39.5) and copies will need to be sent to both the court and the other side (paragraph 3.10 CPR 39).

Do not forget that two copies need to be filed with the Court; one for the court and one for the witness box.

#### **Original documents file**

In addition to preparing and filing the trial bundle, you will want to prepare a bundle of the original documents so they can be taken to court. Para 27.6, CPR PD 32 makes it clear that these should be available to the court during trial if requested, so you will want to make sure you have these with you.

#### **Trial bundles at trial**

##### **Taking a copy of the bundle with you for trial**

In terms of attending trial, you may want to consider taking an additional copy of the trial bundle with you.

From experience, it may be the case that the court has misplaced the witness copy of the bundle.

Failure to do this may result in you needing to give your own copy of the bundle away. This is of course not ideal, as you may find it hard to keep up with reference made to it throughout the trial.

##### **Trial bundles at the end of trial**

A further recent change in respect of trial bundles came into effect on 5 April 2019, following the publication of a joint notice from HMTCS, which made clear that copies of court bundles and documents provided for the use of witnesses are the sole responsibility of the parties' representatives as data controllers.

It is the parties' responsibility to remove files from the court immediately following the end of trial.

The Court will not be responsible for the safe storage, transport or destruction of papers.

If any bundles at the court which contain personal data are left unattended or unsecured, then the Court may consider it necessary to report a breach of personal data under GDPR.

It is therefore important to ensure that you take the trial bundle with you on leaving the court. For claimants, this includes removing the witness copy of the bundle when leaving the court.

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