

Practice Direction 27A and its application to financial proceedings

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The courts are increasingly referring to PD 27A and the necessity for compliance.

Experience tells us that making the courts/judges life easier not only assists in the smooth running of a hearing but also the attitude of the court towards the solicitors, the advocates and the parties involved.

It is likely that the courts will increasingly consider making costs orders where there has been non compliance. PD12.1 specifically refers to the courts making “wasted costs orders....”

Some particular points to bear in mind;

1. “The Case Summary”: There should be “an up to date case summary” Advocates will then not need to rehearse all the background in a position statement. It should be agreed if possible. As it needs to be agreed it should be neutral in tone.
2. “Statement of issues to be determined”: Judges have commented on the failure to provide these. It is a document that enables the court to immediately focus on those issues that need to be considered in depth as opposed to those that are largely agreed (even though relevant to the overall picture.)
3. “Position Statement”: including summary of order sought/draft directions.
4. “Note/skeleton argument”. This is not *required* by PD27A “unless appropriate” but this document is your opportunity to be “bullish” on behalf of your client, should you/they so wish.
5. “A Chronology”, if it is a final hearing” Again it is a snapshot for the court.
6. “Counsel should receive the bundle not less than **3** working days before the hearing” which means, for example, by close of business on the Tuesday before a hearing starting on Monday. The failure to do this results in documents being filed late. Advocates should not

have to “cover” to the court for the non delivery of a bundle by their instructing solicitors within the timescales provided.

7. Without a bundle it is very difficult to agree a schedule of assets and liabilities (and they *should/must* be agreed whenever possible). Having up to date disclosure and being able to rely on the figures provided will also limit the number of documents required to go in the bundle – but this cannot be done properly the night before the hearing, and certainly can’t be easily agreed.
8. The bundles should be lodged with the court, or links given to e-bundles, not less than **2** working days before the hearing, e.g. by close of business on the Wednesday before a hearing starting on Monday: this is essential as judges utilise any out of court time to read into forthcoming cases.
9. It is good practice for advocates to serve a LIP with practice direction documents at least 3 working days before the final hearing.
10. AG v VD [2021] EWFC 9 paras 8 and 144-147 is *essential* reading and so we ignore the PD27A requirements at our peril.

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