

# Client Alert

Business Litigation Practice Group

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## **The UK Shorter Trials Scheme: Tried & Tested** *Energy case under new trial regime, intended to trim time and costs, gets Court of Appeal verdict*

The Shorter Trials Scheme—a time-sensitive case management process for quicker and less costly access to justice—was introduced in September 2015 for cases in the commercial, technology and construction courts, the chancery division and the mercantile courts of England & Wales. The recent Court of Appeal decision in *National Bank of Abu Dhabi v BP* saw the procedural road tested for the first time, with generally positive feedback.

### **Background**

The scheme is intended to ease the time and cost burden for disputing parties when pursuing a case through the various courts. The scheme, ideal for cases where the outcome turns on the determination of a single, albeit materially significant, issue, aims to reach trial within 10 months of proceedings having been issued, with judgment to follow within 6 weeks. The length of the trial itself is limited to 4 days (including judicial reading time).

Such deadlines—which are notably shorter than the norm—provide certainty to the parties and inevitably allow costs to be more carefully controlled. For example, it encourages greater cooperation with regard to procedural and substantive issues, such as limiting the disclosure of documents (often the most costly aspect of proceedings).

### **The case**

The BP case related to a US\$70 million receivables financing transaction. The underlying asset was BP's sale of 100,000 metric tonnes of crude oil to a Moroccan oil refinery, owned by SAMIR. BP had agreed to sell to the bank 95% of the debt it was owed by SAMIR, representing and warranting to the bank that no other agreement prohibited such assignment. When SAMIR defaulted on the payment of the debt in November 2015, the bank looked to BP for payment, in circumstances where BP's sale and purchase agreement with SAMIR expressly prohibited assignment of the debt (thus rendering the debt worthless to SAMIR). Following a one day trial, Mrs Justice Carr held in favour of the bank, ordering BP to pay US\$70 million.

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The case was ideally suited to the Shorter Trial Scheme, because at its heart there was a single issue of interpretation to be resolved, namely whether or not the existence of the prohibition on assignment of the debt in the sale and purchase agreement meant that the representation/warranty BP had given to the bank was false. Disclosure was very limited and there were no witness statements or oral evidence. The claim was issued on 4 March, 2016 and came to trial in just 8 months on 7 November, 2016 (with judgment handed down within 2 weeks of the hearing). The total costs on each side was reportedly £350,000.

BP was subsequently granted permission to appeal, which due to the case being part of the Shorter Trial Scheme, was heard on an expedited basis. The Court of Appeal issued its decision on 27 July, 2017, finding instead for BP, with detailed reasons for the judgment reserved.

The reversal of the first instance decision, whilst good news for BP, has a cautionary note.

Cases must be carefully selected for the Shorter Trial Scheme, recognising that the expedited nature of the proceedings must not compromise the judge's ability to reach the correct decision. In cases where that is a risk, the benefits of the shorter trial can be eroded by the time and costs of any subsequent appeal (irrespective of whether the original judgment stands or not). This underlines the importance of thorough initial case review, weighting up all the options and allowing informed decisions to be taken from the outset.

For the right case, however, the Shorter Trial Scheme is attractive to parties seeking speedier and less costly resolution of their disputes through the courts.

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