

PRACTICE DIRECTION – CASE MANAGEMENT – PRELIMINARY STAGE: ALLOCATION AND RE-ALLOCATION

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 26

REMINDERS OF IMPORTANT RULE PROVISIONS OTHER THAN PARTS 26–29

Attention is drawn in particular to the following provisions of the Civil Procedure Rules:

- Part 1** The Overriding Objective (defined in Rule 1.1).

The duty of the court to further that objective by actively managing cases (set out in Rule 1.4).

The requirement that the parties help the court to further that objective (set out in Rule 1.3).
- Part 3** The court's case management powers (which may be exercised on application or on its own initiative) and the sanctions which it may impose.
- Part 24** The court's power to grant summary judgment.
- Parts 32-35** Evidence, especially the court's power to control evidence.

Attention is also drawn to the practice directions which supplement those Parts and Parts 27-29, and to those which relate to the various specialist jurisdictions.

THE ALLOCATION QUESTIONNAIRE

2.1 Form

- (1) The allocation questionnaire referred to in Part 26 will be in Form N 150
- (2) (a) Attention is drawn to Section 6 of the Costs Practice Direction supplementing Parts 43 to 48, which requires an estimate of costs to be filed and served when an allocation questionnaire is filed by a party to a claim which is outside the limits of the small claims track.

(b) A party will comply with that obligation if the costs estimate he files and serves states the figures for the base costs, incurred and to be incurred, which he expects, if he is successful, to recover from the other party. The estimate should show an itemised breakdown of how it is calculated, showing separately the amounts included for profit costs, disbursements and VAT. It should be substantially in the form

illustrated in Precedent H in the schedule to the Costs Practice Direction.

(Paragraph 2.2 of the Costs Practice Direction defines “Base costs”)

- (c) Any party who has entered into a funding arrangement need not reveal the amount of any additional liability.

(CPR rule 43.2 defines “funding arrangement” and “additional liability”)

- (d) No later than when he files the estimate the solicitor acting for that party must deliver a copy to his client.

2.2 Provision of Extra Information

- (1) This paragraph sets out what a party should do when he files his allocation questionnaire if he wishes to give the court information about matters which he believes may affect its decision about allocation or case management.
- (2) The general rule is that the court will not take such information into account unless the document containing it either:
 - (a) confirms that all parties have agreed that the information is correct and that it should be put before the court, or
 - (b) confirms that the party who has sent the document to the court has delivered a copy to all the other parties.
- (3) The following are examples of information which will be likely to help the court:
 - (a) a party’s intention to apply for summary judgment or some other order that may dispose of the case or reduce the amount in dispute or the number of issues remaining to be decided,
 - (b) a party’s intention to issue a Part 20 claim or to add another party,
 - (c) the steps the parties have taken in the preparation of evidence (in particular expert evidence), the steps they intend to take and whether those steps are to be taken in co-operation with any other party,
 - (d) the directions the party believes will be appropriate to be given for the management of the case,
 - (e) about any particular facts that may affect the timetable the court will set,
 - (f) any facts which may make it desirable for the court to fix an allocation hearing or a hearing at which case management directions will be given.

2.3 Consultation

- (1) The parties should consult one another and co-operate in completing the allocation questionnaires and giving other information to the court.

- (2) They should try to agree the case management directions which they will invite the court to make. Further details appear in the practice directions which supplement Parts 28 and 29.
- (3) The process of consultation must not delay the filing of the allocation questionnaires.

2.4 Hearings Before Allocation

Where a court hearing takes place (for example on an application for an interim injunction or for summary judgment under Part 24) before the claim is allocated to a track, the court may at that hearing:

- (1) dispense with the need for the parties to file allocation questionnaires, treat the hearing as an allocation hearing, make an order for allocation and give directions for case management, or
- (2) fix a date for allocation questionnaires to be filed and give other directions.

2.5 Consequences of Failure to File an Allocation Questionnaire

- (1) If no party files an allocation questionnaire within the time specified by Form N152:
 - (a) the file will be referred to a judge for his directions,
 - (b) the judge will usually order that unless an allocation questionnaire is filed within 3 days from service of that order the claim and any counterclaim will be struck out, but he may make a different order.
- (2) Where a party files an allocation questionnaire but another party does not, the court may:
 - (a) allocate the claim to a track if it considers that it has enough information to do so, or
 - (b) order that an allocation hearing is listed and that all or any parties must attend.

STAY TO ALLOW FOR SETTLEMENT OF THE CASE

3.1 Procedure for the parties to apply to extend the stay

- (1) (a) The court will generally accept a letter from any party or from the solicitor for any party as an application to extend the stay under rule 26.4.
- (b) The letter should –
 - (i) confirm that the application is made with the agreement of all parties, and
 - (ii) explain the steps being taken and identify any mediator or expert assisting with the process.

- (2) (a) An order extending the stay must be made by a judge.
- (b) The extension will generally be for no more than 4 weeks unless clear reasons are given to justify a longer time.
- (3) More than one extension of the stay may be granted.

3.2 Position at the end of the stay if no settlement is reached

- (1) At the end of the stay the file will be referred to a judge for his directions.
- (2) He will consider whether to allocate the claim to a track and what other directions to give, or may require any party to give further information or fix an allocation hearing.

3.3 Any party may apply for a stay to be lifted.

3.4 Position where settlement is reached during a stay

Where the whole of the proceedings are settled during a stay, the taking of any of the following steps will be treated as an application for the stay to be lifted:

- (1) an application for a consent order (in any form) to give effect to the settlement,
- (2) an application for the approval of a settlement where a party is a person under a disability,
- (3) giving notice of acceptance of money paid into court in satisfaction of the claim or applying for money in court to be paid out.

ALLOCATION, RE-ALLOCATION AND CASE MANAGEMENT

4.1 The court's general approach

The Civil Procedure Rules lay down the overriding objective, the powers and duties of the court and the factors to which it must have regard in exercising them. The court will expect to exercise its powers as far as possible in co-operation with the parties and their legal representatives so as to deal with the case justly in accordance with that objective.

4.2 Allocation to track

- (1) In most cases the court will expect to have enough information from the statements of case and allocation questionnaires to be able to allocate the claim to a track and to give case management directions.
- (2) If the court does not have enough information to allocate the claim it will generally make an order under rule 26.5(3) requiring one or more parties to provide further information within 14 days.
- (3) Where there has been no allocation hearing the notice of allocation will be in Forms N154 (fast track), N155 (multi-track) or N157-160 (small claims).

- (4) (a) The general rule is that the court will give brief reasons for its allocation decision, and these will be set out in the notice of allocation.
- (b) The general rule does not apply where all the allocation questionnaires which have been filed have expressed the wish for the claim to be allocated to the track to which the court has allocated it.
- (5) Paragraph 6 of this practice direction deals with allocation hearings and Paragraph 7 deals with allocation principles.
- (6) Paragraph 11 of this practice direction deals with re-allocation.
- 4.3 The practice directions supplementing Parts 27, 28 and 29 contain further information about the giving of case management directions at the allocation stage.

SUMMARY JUDGMENT OR OTHER EARLY TERMINATION

- 5.1 Part of the court's duty of active case management is the summary disposal of issues which do not need full investigation and trial (rule 1.4(2)(c)),
- 5.2 The court's powers to make orders to dispose of issues in that way include:
 - (a) under rule 3.4, striking out a statement of case, or part of a statement of case, and
 - (b) under Part 24, giving summary judgment where a claimant or a defendant has no reasonable prospect of success.

The court may use these powers on an application or on its own initiative. The practice direction 'Summary Disposal of Claims' contains further information.

- 5.3 (1) A party intending to make such an application should do so before or when filing his allocation questionnaire.
- (2) Where a party makes an application for such an order before a claim has been allocated to a track the court will not normally allocate the claim before the hearing of the application.
- (3) Where a party files an allocation questionnaire stating that he intends to make such an application but has not done so, the judge will usually direct that an allocation hearing is listed.
- (4) The application may be heard at that allocation hearing if the application notice has been issued and served in sufficient time.
- 5.4 (1) This paragraph applies where the court proposes to make such an order of its own initiative.
- (2) The court will not allocate the claim to a track but instead it will either:
 - (a) fix a hearing, giving the parties at least 14 days notice of the date of the hearing and of the issues which it is proposed that the court will decide, or

- (b) make an order directing a party to take the steps described in the order within a stated time and specifying the consequence of not taking those steps.

5.5 Where the court decides at the hearing of an application or a hearing fixed under paragraph 5.4(2)(a) that the claim (or part of the claim) is to continue it may:

- (1) treat that hearing as an allocation hearing, allocate the claim and give case management directions, or
- (2) give other directions.

ALLOCATION HEARINGS

6.1 General Principle

The court will only hold an allocation hearing on its own initiative if it considers that it is necessary to do so.

6.2 Procedure

Where the court orders an allocation hearing to take place:

- (1) it will give the parties at least 7 days notice of the hearing in Form N153, and
- (2) Form N153 will give a brief explanation of the decision to order the hearing.

6.3 Power to treat another hearing as an allocation hearing

Where the court may treat another hearing as an allocation hearing it does not need to give notice to any party that it proposes to do so.

6.4 The notice of allocation after an allocation hearing will be in Forms N154, N155 or N157.

6.5 Representation

A legal representative who attends an allocation hearing should, if possible, be the person responsible for the case and must in any event be familiar with the case, be able to provide the court with the information it is likely to need to take its decisions about allocation and case management, and have sufficient authority to deal with any issues that are likely to arise.

6.6 Sanctions

- (1) This paragraph sets out the sanctions that the court will usually impose for default in connection with the allocation procedure, but the court may make a different order.
- (2) (a) Where an allocation hearing takes place because a party has failed to file an allocation questionnaire or to provide further information which

the court has ordered, the court will usually order that party to pay on the indemnity basis the costs of any other party who has attended the hearing, summarily assess the amount of those costs, and order them to be paid forthwith or within a stated period.

- (b) The court may order that if the party does not pay those costs within the time stated his statement of case will be struck out.
- (3) Where a party whose default has led to a fixing of an allocation hearing is still in default and does not attend the hearing the court will usually make an order specifying the steps he is required to take and providing that unless he takes them within a stated time his statement of case will be struck out.

ALLOCATION PRINCIPLES

7.1 Rules 26.6, 26.7 and 26.8

- (1) Rule 26.6 sets out the scope of each track,
- (2) Rule 26.7 states the general rule for allocation, and
- (3) Rule 26.8 sets out the matters relevant to allocation to a track.

7.2 Objective of this paragraph

The object of this paragraph is to explain what will be the court's general approach to some of the matters set out in rule 26.8.

7.3 'the financial value of the claim'

- (1) Rule 26.8(2) provides that it is for the court to assess the financial value of a claim.
- (2) Where the court believes that the amount the claimant is seeking exceeds what he may reasonably be expected to recover it may make an order under rule 26.5(3) directing the claimant to justify the amount.

7.4 'any amount not in dispute'

In deciding, for the purposes of rule 26.8(2), whether an amount is in dispute the court will apply the following general principles:

- (1) Any amount for which the defendant does not admit liability is in dispute,
- (2) Any sum in respect of an item forming part of the claim for which judgment has been entered (for example a summary judgment) is not in dispute,
- (3) Any specific sum claimed as a distinct item and which the defendant admits he is liable to pay is not in dispute,
- (4) Any sum offered by the defendant which has been accepted by the claimant in satisfaction of any item which forms a distinct part of the claim is not in dispute.

It follows from these provisions that if, in relation to a claim the value of which is above the small claims track limit of £5,000, the defendant makes, before allocation, an admission that reduces the amount in dispute to a figure below £5,000 (see CPR Part 14), the normal track for the claim will be the small claims track. As to recovery of pre-allocation costs, the claimant can, before allocation, apply for judgment with costs on the amount of the claim that has been admitted (see CPR rule 14.3 but see also paragraph 15.1(3) of the Costs Practice Direction supplementing Parts 43 to 48 under which the court has a discretion to allow pre-allocation costs).

7.5 'the views expressed by the parties'

The court will treat these views as an important factor, but the allocation decision is one for the court, to be taken in the light of all the circumstances, and the court will not be bound by any agreement or common view of the parties.

7.6 'the circumstances of the parties'

See paragraph 8.

7.7 'the value of any counterclaim or other Part 20 claim'

Where the case involves more than one money claim (for example where there is a Part 20 claim or there is more than one claimant each making separate claims) the court will not generally aggregate the claims. Instead it will generally regard the largest of them as determining the financial value of the claims.

THE SMALL CLAIMS TRACK – ALLOCATION AND CASE MANAGEMENT

8.1 Allocation

- (1) (a) The small claims track is intended to provide a proportionate procedure by which most straightforward claims with a financial value of not more than £5,000 can be decided, without the need for substantial pre-hearing preparation and the formalities of a traditional trial, and without incurring large legal costs. (Rule 26.6 provides for a lower financial value in certain types of case.)
- (b) The procedure laid down in Part 27 for the preparation of the case and the conduct of the hearing are designed to make it possible for a litigant to conduct his own case without legal representation if he wishes.
- (c) Cases generally suitable for the small claims track will include consumer disputes, accident claims, disputes about the ownership of goods and most disputes between a landlord and tenant other than those for possession.
- (d) A case involving a disputed allegation of dishonesty will not usually be suitable for the small claims track.

(2) Rule 26.7(3) and rule 27.14(5)

- (a) These rules allow the parties to consent to the allocation to the small claims track of a claim the value of which is above the limits mentioned in rule 26.6(2) and, in that event, the rules make provision about costs.
- (b) The court will not allocate such a claim to the small claims track, notwithstanding that the parties have consented to the allocation, unless it is satisfied that it is suitable for that track.
- (c) The court will not normally allow more than one day for the hearing of such a claim.
- (d) The court will give case management directions to ensure that the case is dealt with in as short a time as possible. These may include directions of a kind that are not usually given in small claim cases, for example, for Scott Schedules.

8.2 Case management

- (1) Directions for case management of claims allocated to the small claims track will generally be given by the court on allocation.
- (2) Rule 27.4 contains further provisions about directions and the practice direction supplementing Part 27 sets out the standard directions which the court will usually give.

THE FAST TRACK

9.1 Allocation

- (1) Where the court is to decide whether to allocate to the fast track or the multi-track a claim for which the normal track is the fast track, it will allocate the claim to the fast track unless it believes that it cannot be dealt with justly on that track.
- (2) The court will, in particular, take into account the limits likely to be placed on disclosure, the extent to which expert evidence may be necessary and whether the trial is likely to last more than a day.
- (3) (a) When it is considering the likely length of the trial the court will regard a day as being a period of 5 hours, and will consider whether that is likely to be sufficient time for the case to be heard.
- (b) The court will also take into account the case management directions (including the fixing of a trial timetable) that are likely to be given and the court's powers to control evidence and to limit cross-examination.
- (c) The possibility that a trial might last longer than one day is not necessarily a conclusive reason for the court to allocate or to re-allocate a claim to the multi-track.
- (d) A claim may be allocated to the fast track or ordered to remain on that track although there is to be a split trial.

- (e) Where the case involves a counterclaim or other Part 20 claim that will be tried with the claim and as a result the trial will last more than a day, the court may not allocate it to the fast track.

9.2 Case management

- (1) Directions for the case management of claims which have been allocated to the fast track will be given at the allocation stage or at the listing stage (in either case with or without a hearing) or at both, and if necessary at other times. The trial judge may, at or before the trial, give directions for its conduct.
- (2) The practice direction supplementing Part 28 contains further provisions and contains standard directions which the court may give.

THE MULTI-TRACK

10.1 The following paragraphs do not apply to–

- (1) a claim for possession of land in the county court, where the defendant has filed a defence;
- (2) any claim which is being dealt with at the Royal Courts of Justice.

10.2 Venue for allocation and case management

- (1) The case management of a claim which is allocated to the multi-track will normally be dealt with at a Civil Trial Centre.
- (2) In the case of a claim to which Part 49 (specialist proceedings) applies, case management must be dealt with at a Civil Trial Centre. Sub-paragraphs (4) to (10) do not apply to such a claim. The claim will be allocated to the multi-track irrespective of its value, and must be transferred to a Civil Trial Centre for allocation and case management if not already there.
- (3) Where a claim is issued in or automatically transferred to a Civil Trial Centre it will be allocated and managed at that court.
- (4) The following *sub-paragraphs* apply to a claim which is issued in or automatically transferred to a court which is not a Civil Trial Centre. Such a court is referred to as a ‘feeder court’.
- (5) Where a judge sitting at a feeder court decides, on the basis of the allocation questionnaires and any other documents filed by the parties, that the claim should be dealt with on the multi-track he will normally make an order:
 - (a) allocating the claim to that track,
 - (b) giving case management directions, and
 - (c) transferring the claim to a Civil Trial Centre.

- (6) If he decides that an allocation hearing or some pre-allocation hearing is to take place (for example to strike out a statement of case under Part 3 of the Rules) that hearing will take place at the feeder court.
- (7) If, before allocation, a hearing takes place at a feeder court and in exercising his powers under paragraph 2.4(1) above the judge allocates the claim to the multi-track, he will also normally make an order transferring the claim to a Civil Trial Centre.
- (8) A judge sitting at a feeder court may, rather than making an allocation order himself, transfer the claim to a Civil Trial Centre for the decision about allocation to be taken there.
- (9) When, following an order for transfer, the file is received at the Civil Trial Centre, a judge sitting at that Centre will consider it and give any further directions that appear necessary or desirable.
- (10) Where there is reason to believe that more than one case management conference may be needed and the parties or their legal advisers are located inconveniently far from the Civil Trial Centre, a judge sitting at a feeder court may, with the agreement of the Designated Civil Judge and notwithstanding the allocation of the case to the multi-track, decide that in the particular circumstances of the case it should not be transferred to a Civil Trial Centre, but should be case managed for the time being at the feeder court.
- (11) A Designated Civil Judge may at any time make an order transferring a claim from a feeder court to a Civil Trial Centre and he may do so irrespective of the track, if any, to which it has been allocated. He may also permit a feeder court to keep for trial a claim or (subject to review from time to time) a category of claims. Any such permission should take into account the ability of the feeder court in relation to the Civil Trial Centre to provide suitable and effective trial within an appropriate trial period.
- (12) No order will be made by a feeder court fixing a date for a hearing at a Civil Trial Centre unless that date has been given or confirmed by a judge or listing officer of that Centre.

10.3 Case management

Part 29 of the Rules and the practice direction supplementing that Part set out the procedure to be adopted.

RE-ALLOCATION OF CLAIMS AND THE VARIATION OF DIRECTIONS

- 11.1 (1) Where a party is dissatisfied with an order made allocating the claim to a track he may appeal or apply to the court to re-allocate the claim.
- (2) He should appeal if the order was made at a hearing at which he was present or represented, or of which he was given due notice.

(3) In any other case he should apply to the court to re-allocate the claim.

- 11.2 Where there has been a change in the circumstances since an order was made allocating the claim to a track the court may re-allocate the claim. It may do so on application or on its own initiative.

The practice directions supplementing Parts 28 and 29 contain provisions about the variation of case management directions.

ALLOCATION AND CASE MANAGEMENT OF ASSESSMENTS OF DAMAGES AND ALLIED PROCEEDINGS

12.1 Scope

- (1) In the following paragraphs a 'relevant order' means an order or judgment of the court which requires the amount of money to be paid by one party to another to be decided by the court.
- (2) A relevant order may have been obtained:
 - (a) by a judgment in default under Part 12,
 - (b) by a judgment on an admission under Part 14,
 - (c) on the striking out of a statement of case under Part 3,
 - (d) on a summary judgment application under Part 24,
 - (e) on the determination of a preliminary issue or on a trial as to liability,
or
 - (f) at trial.
- (3) A relevant order includes an order for an amount of damages or interest to be decided by the court, an order for the taking of an account or the making of an inquiry as to any sum due, and any similar order.
- (4) A relevant order does not include an order for the assessment of costs except where the court has made an order for the assessment of costs payable under a contract other than a contract between a solicitor and client for legal services.

12.2 Directions

- (1) Directions which may be given under the following paragraphs may include:
 - (a) a direction allocating or re-allocating the claim,
 - (b) a direction that allocation questionnaires be filed by a specified date,
 - (c) a direction that a date be fixed for a hearing or a further hearing,
 - (d) an order that the claim be stayed while the parties try to settle the case by alternative dispute resolution or other means.

- (2) Directions may specify the level or type of judge before whom a hearing or a further hearing will take place and the nature and purpose of that hearing.

12.3 Allocation

Where a claim has not been allocated to a track at the time a relevant order is made, the court will not normally consider it to be appropriate to allocate it to a track (other than the small claims track) unless the amount payable appears to be genuinely disputed on grounds which appear to be substantial. It may instead direct that a disposal hearing (referred to in paragraph 12.8) be listed.

12.4 Orders and judgments made at hearings

Where a relevant order is made by a judge at a hearing, the judge should at the same time give such directions as the information about the case available to him enables him to give.

12.5 Orders made by consent without a hearing

- (1) Where a relevant order is made by consent without a hearing a judge will give directions.
- (2) The parties should where possible file with the draft consent order agreed directions which they invite the court to give.

12.6 Judgments entered on admissions without a hearing

- (1) Where a relevant order is a judgment entered without a hearing under Part 14 the court will give directions.
- (2) The court may in particular direct that a disposal hearing be listed.

12.7 Judgments entered in default

- (1) This paragraph applies where the relevant order is a judgment entered under Part 12 without a hearing.
- (2) On the entry of the judgment the court will list a disposal hearing.

12.8 Disposal hearings

- (1) At a disposal hearing the court may give directions or decide the amount payable in accordance with this sub-paragraph.
- (2) If the financial value of the claim (determined in accordance with Part 26) is such that the claim would, if defended, be allocated to the small claims track, the court will normally allocate it to that track and may treat the disposal hearing as a final hearing in accordance with Part 27.
- (3) If the court does not give directions and does not allocate the claim to the small claims track, it may nonetheless order that the amount payable is to be decided there and then without allocating the claim to another track.

- (4) Rule 32.6 applies to evidence at a disposal hearing unless the court otherwise directs.
- (5) The court will not exercise its powers under sub-paragraph 12.8(3) unless any written evidence on which the claimant relies has been served on the defendant at least 3 days before the disposal hearing.

12.9 Costs

- (1) Attention is drawn to the costs practice directions and in particular to the court's power to make a summary assessment of costs.
- (2) Attention is drawn to rule 44.13(1) which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.
- (3) Attention is drawn to rule 27.14 (special rules about costs in cases allocated to the small claims track).
- (4) Attention is drawn to Part 46 (fixed trial costs in cases which have been allocated to the fast track). Part 46 (Fast track trial costs) will not apply to a case dealt with at a disposal hearing whatever the financial value of the claim. So the costs of a disposal hearing will be in the discretion of the court.

12.10 Jurisdiction of Masters and district judges

Unless the court otherwise directs, a Master or a district judge may decide the amount payable under a relevant order irrespective of the financial value of the claim and of the track to which the claim may have been allocated.