

# PART 26

## CASE MANAGEMENT – PRELIMINARY STAGE

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### SCOPE OF THIS PART

- 26.1 | (1) This Part provides for –
- (a) the automatic transfer of some defended cases between courts; and
  - (b) the allocation of defended cases to case management tracks.
- (2) There are three tracks –
- (a) the small claims track;
  - (b) the fast track; and
  - (c) the multi-track.

(Rule 26.6 sets out the normal scope of each track. Part 27 makes provision for the small claims track. Part 28 makes provision for the fast track. Part 29 makes provision for the multi-track)

### AUTOMATIC TRANSFER

- 26.2 | (1) This rule applies to proceedings where –
- (a) the claim is for a specified amount of money;

- (b) the claim was commenced in a court which is not the defendant’s home court;
  - (c) the claim has not been transferred to another defendant’s home court under rule 13.4 (application to set aside<sup>(GL)</sup> or vary default judgment – procedure) or rule 14.12 (admission – determination of rate of payment by judge); and
  - (d) the defendant is an individual.
- (2) This rule does not apply where the claim was commenced in a specialist list<sup>(GL)</sup>.
- (3) Where this rule applies, the court will transfer the proceedings to the defendant’s home court when a defence is filed, unless paragraph (4) applies.

(Rule 2.3 defines ‘defendant’s home court’)

- (4) Where the claimant notifies the court under rule 15.10 or rule 14.5 that he wishes the proceedings to continue, the court will transfer the proceedings to the defendant’s home court when it receives that notification from the claimant.

(Rule 15.10 deals with a claimant’s notice where the defence is that money claimed has been paid)

(Rule 14.5 sets out the procedure where the defendant admits part of a claim for a specified amount of money)

- (5) Where –
- (a) the claim is against two or more defendants with different home courts; and
  - (b) the defendant whose defence is filed first is an individual, proceedings are to be transferred under this rule to the home court of that defendant.
- (6) The time when a claim is automatically transferred under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

## ALLOCATION QUESTIONNAIRE

26.3

- (1) When a defendant files a defence the court will serve an allocation questionnaire on each party unless –
- (a) rule 15.10 or rule 14.5 applies; or
  - (b) the court dispenses with the need for a questionnaire.
- (2) Where there are two or more defendants and at least one of them files a defence, the court will serve the allocation questionnaire under paragraph (1) –
- (a) when all the defendants have filed a defence; or

(b) when the period for the filing of the last defence has expired, whichever is the sooner.

(Rule 15.4 specifies the period for filing a defence)

- (3) Where proceedings are automatically transferred to the defendant's home court under rule 26.2, the court in which the proceedings have been commenced will serve an allocation questionnaire before the proceedings are transferred.
- (4) Where –
- (a) rule 15.10 or rule 14.5 applies; and
- (b) the proceedings are not automatically transferred to the defendant's home court under rule 26.2,
- the court will serve an allocation questionnaire on each party when the claimant files a notice indicating that he wishes the proceedings to continue.
- (5) The court may, on the application of the claimant, serve an allocation questionnaire earlier than it would otherwise serve it under this rule.
- (6) Each party must file the completed allocation questionnaire no later than the date specified in it, which shall be at least 14 days after the date when it is deemed to be served on the party in question.
- (6A) The date for filing the completed allocation questionnaire may not be varied by agreement between the parties.
- (7) The time when the court serves an allocation questionnaire under this rule may be varied by a practice direction in respect of claims issued by the Production Centre.

(Rule 7.10 makes provision for the Production Centre)

(Rule 6.7 specifies when a document is deemed to be served)

## STAY TO ALLOW FOR SETTLEMENT OF THE CASE

26.4

- (1) A party may, when filing the completed allocation questionnaire, make a written request for the proceedings to be stayed<sup>(GL)</sup> while the parties try to settle the case by alternative dispute resolution<sup>(GL)</sup> or other means.
- (2) Where –
- (a) all parties request a stay<sup>(GL)</sup> under paragraph (1); or
- (b) the court, of its own initiative, considers that such a stay would be appropriate,
- the court will direct that the proceedings be stayed for one month.
- (3) The court may extend the stay<sup>(GL)</sup> until such date or for such specified period as it considers appropriate.
- (4) Where the court stays<sup>(GL)</sup> the proceedings under this rule, the claimant must tell the court if a settlement is reached.

- (5) If the claimant does not tell the court by the end of the period of the stay<sup>(GL)</sup> that a settlement has been reached, the court will give such directions as to the management of the case as it considers appropriate.

## ALLOCATION

26.5

- (1) The court will allocate the claim to a track –
- (a) when every defendant has filed an allocation questionnaire, or
  - (b) when the period for filing the allocation questionnaires has expired, whichever is the sooner, unless it has –
    - (i) stayed<sup>(GL)</sup> the proceedings under rule 26.4; or
    - (ii) dispensed with the need for allocation questionnaires.

(Rules 12.7 and 14.8 provide for the court to allocate a claim to a track where the claimant obtains default judgment on request or judgment on admission for an amount to be decided by the court)

- (2) If the court has stayed<sup>(GL)</sup> the proceedings under rule 26.4, it will allocate the claim to a track at the end of the period of the stay.
- (3) Before deciding the track to which to allocate proceedings or deciding whether to give directions for an allocation hearing to be fixed, the court may order a party to provide further information about his case.
- (4) The court may hold an allocation hearing if it thinks it is necessary.
- (5) If a party fails to file an allocation questionnaire, the court may give any direction it considers appropriate.

## SCOPE OF EACH TRACK

26.6

- (1) The small claims track is the normal track for –
- (a) any claim for personal injuries where –
    - (i) the financial value of the claim is not more than £5,000; and
    - (ii) the financial value of any claim for damages for personal injuries is not more than £1,000;
  - (b) any claim which includes a claim by a tenant of residential premises against his landlord where –
    - (i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
    - (ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
    - (iii) the financial value of any other claim for damages is not more than £1,000.

(Rule 2.3 defines ‘claim for personal injuries’ as proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person’s death)

- (2) For the purposes of paragraph (1) ‘damages for personal injuries’ means damages claimed as compensation for pain, suffering and loss of amenity and does not include any other damages which are claimed.
- (3) Subject to paragraph (1), the small claims track is the normal track for any claim which has a financial value of not more than £5,000.

(Rule 26.7(4) provides that the court will not allocate to the small claims track certain claims in respect of harassment or unlawful eviction)

- (4) Subject to paragraph (5), the fast track is the normal track for any claim –
  - (a) for which the small claims track is not the normal track; and
  - (b) which has a financial value of not more than £15,000.
- (5) The fast track is the normal track for the claims referred to in paragraph (4) only if the court considers that –
  - (a) the trial is likely to last for no longer than one day; and
  - (b) oral expert evidence at trial will be limited to –
    - (i) one expert per party in relation to any expert field; and
    - (ii) expert evidence in two expert fields.
- (6) The multi-track is the normal track for any claim for which the small claims track or the fast track is not the normal track.

## GENERAL RULE FOR ALLOCATION

26.7

- (1) In considering whether to allocate a claim to the normal track for that claim under rule 26.6, the court will have regard to the matters mentioned in rule 26.8(1).
- (2) The court will allocate a claim which has no financial value to the track which it considers most suitable having regard to the matters mentioned in rule 26.8(1).
- (3) The court will not allocate proceedings to a track if the financial value of the claim, assessed by the court under rule 26.8, exceeds the limit for that track unless all the parties consent to the allocation of the claim to that track.
- (4) The court will not allocate a claim to the small claims track, if it includes a claim by a tenant of residential premises against his landlord for a remedy in respect of harassment or unlawful eviction.

## MATTERS RELEVANT TO ALLOCATION TO A TRACK

26.8

- (1) When deciding the track for a claim, the matters to which the court shall have regard include –
  - (a) the financial value, if any, of the claim;

- (b) the nature of the remedy sought;
  - (c) the likely complexity of the facts, law or evidence;
  - (d) the number of parties or likely parties;
  - (e) the value of any counterclaim or other Part 20 claim and the complexity of any matters relating to it;
  - (f) the amount of oral evidence which may be required;
  - (g) the importance of the claim to persons who are not parties to the proceedings;
  - (h) the views expressed by the parties; and
  - (i) the circumstances of the parties.
- (2) It is for the court to assess the financial value of a claim and in doing so it will disregard –
- (a) any amount not in dispute;
  - (b) any claim for interest;
  - (c) costs; and
  - (d) any contributory negligence.
- (3) Where –
- (a) two or more claimants have started a claim against the same defendant using the same claim form; and
  - (b) each claimant has a claim against the defendant separate from the other claimants,
- the court will consider the claim of each claimant separately when it assesses financial value under paragraph (1).

## NOTICE OF ALLOCATION

26.9

- (1) When it has allocated a claim to a track, the court will serve notice of allocation on every party.
  - (2) When the court serves notice of allocation on a party, it will also serve –
    - (a) a copy of the allocation questionnaires filed by the other parties; and
    - (b) a copy of any further information provided by another party about his case (whether by order or not).
- (Rule 26.5 provides that the court may, before allocating proceedings, order a party to provide further information about his case)

## RE-ALLOCATION

26.10

The court may subsequently re-allocate a claim to a different track.

## TRIAL WITH A JURY

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26.11

An application for a claim to be tried with a jury must be made within 28 days of service of the defence.

(Section 69 of the Supreme Court Act 1981<sup>a</sup> and section 66 of the County Courts Act 1984<sup>b</sup> specify when a claim may be tried with a jury)

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0 1981 c.54.

0 1984 c.28 amended by the Housing (Consequential Provisions) Act 1985 (c.71), Schedule 2, paragraphs 57(2) and the Housing Act 1988 (c.50), Schedule 17, paragraph 35(1).