

## Fast Track Claims

### Introduction

Most civil and commercial cases brought in the County Court will be allocated to a “track” at an early stage. There are three tracks: the “small claims” track, the “fast” track and the “multi” track.

The allocation will normally be based upon the value of the claim. Those claims with a value below £10,000 will be allocated to the small claims track; claims between £10,000 and £25,000, expected to take no more than one day at trial, will be allocated to the fast track and those above £25,000 to the multi-track.

This factsheet is intended to explain the litigation process of a “fast track” County Court claim following the commencement of the proceedings and the filing by the Defendant of his Defence.

### Case Management

After the Defence has been filed the Court will send out to the parties a Directions Questionnaire” which consists of a series of questions about the case. The parties must normally complete and return this document to the Court within 14 days.

The case will then normally be formally allocated and the Court will at the same time in fast track cases usually list a hearing called a “case management conference” or CMC. The CMC is a relatively short procedural hearing and can in many cases be listed by telephone with the Judge to save the cost of physical attendance at Court.

At the CMC the Court makes “directions” consisting of a series of orders to take the case forward to trial. Sometimes the Court will also fix the trial date, although this depends on the practice of the particular Court and often this might not happen until a later stage of the case.

In fast track cases, the Court will generally make “standard” directions although these can be tailored as is necessary to suit the case. The Civil Procedure Rules (CPR) provide for standard directions along the following lines:

- 4 weeks: mutual disclosure of documents by the parties by serving lists of documents;
- 10 weeks: exchange of witness statements;
- 14 weeks: exchange of experts’ reports;
- 22 weeks: filing by the parties of “pre-trial checklists” with the Court;
- 30 weeks: trial.

An expert report is a specialist report by an independent expert for the case such as a building surveyor in a dispute about building works or a forensic accountant in a case which concerns lost profits suffered by a business.

If expert evidence is necessary, then the Court will also consider the appointment of a “single joint expert” who is jointly instructed by the parties to keep costs down. If no expert evidence is to be given, then the directions timetable will proceed more swiftly. However, it would be unusual for any fast track claim to be listed for trial until at least 6 months after the proceedings have been started.

Although the directions timetable will list specific dates by which the various steps must be complied with, in practice these are not necessarily set in stone and the parties can generally agree to extend the time for compliance. However, if the parties are not in agreement, then a party can make an application to the Court to compel compliance by the other party with the directions, in default of which a sanction will be imposed.

The pre-trial checklist is a further questionnaire which the parties are required to complete primarily to confirm that the directions have been complied with. If there has been some procedural complication, then the Court might list a further hearing known as a “pre-trial review”.

## Trial

The Court will normally list a fast track case for a one day trial, although cases can be listed for longer if necessary. How long a case will take depends upon the number of witnesses, whether or not there is expert evidence and the legal complexity of the case.

Where there is expert evidence, the default presumption is that experts will not attend trial unless it is considered necessary and this is an issue which is normally considered at the CMC but can be addressed later.

At trial, the Claimant will present his claim and his evidence first. This will include examination of the Claimant's witnesses. Witnesses will then be cross-examined by the Defendant and the Judge may also ask questions of the witnesses. When the Claimant has finished his case, the Defendant presents his Defence and evidence in the same way.

Once the evidence is complete, there are closing submissions, firstly by the Defendant, and then by the Claimant, before the Judge gives judgment.

## Judgment and Costs

There are a number of ways in which the Judge may give judgment.

In a fast track case, he will normally do so immediately (or after a short recess while he considers the evidence) by delivering his judgment verbally. Alternatively the Judge may adjourn the case for judgment to be delivered on another day. On that occasion, the Judge may deliver judgment verbally or prepare a written judgment which is handed down.

The other matter the Judge will wish to address is the legal costs (including any experts' fees). Before trial, the parties are required to serve a statement of their costs incurred to trial. The traditional rule is that the successful party will be entitled to an order for payment of his costs by the losing party. The Judge will summarily assess those costs immediately following judgment. It is typical for the assessed costs to be between 65% and 75% of the costs claimed as the Judge will normally resolve any doubt as to whether costs have been reasonably incurred in favour of the party who is ordered to pay those costs. The CPR also provides that in fast track cases only certain fixed costs can normally be claimed for attendance at the trial itself.

It is also important to understand that Judges now have a very wide discretion when considering the question of legal costs and may not apply the traditional rule. They will take into account other factors, such as the conduct of the parties during the course of the litigation, any offers to settle and whether the successful party has succeeded in relation to all of the issues in the case.

If the Judge considers it appropriate he can in extreme cases go so far as to reverse the order for costs which might normally have made, or only order that a certain percentage of the assessed costs be paid.

Judgments and orders for costs must generally be paid within 14 days unless otherwise ordered.

This note is provided for general information only to the clients of Whitehead Monckton. It should not be relied on for specific advice in specific cases. In all circumstances advice on the subject should be sought from your solicitor.

© Whitehead Monckton: 2018

© Whitehead Monckton, 2018. This note does not constitute legal advice. Specific legal advice should be taken from your solicitor. Whitehead Monckton is authorised and regulated by the Solicitors Regulation Authority (number 608279)