



Allocation Questionnaires and Directions in Civil Proceedings

Allocations questionnaires and directions in civil proceedings

Once a Defence has been filed in proceedings in either the County or the High Court, the next stage is the filing of Allocation Questionnaires. This is a document forwarded by the Court to each side. The Court sets a deadline by which the completed document must be returned to them.

The person who started the proceedings, i.e.: the Claimant also has to pay a fee to the Court of £80 when the Allocation Questionnaire is returned. In some straightforward matters the Court will dispense with an Allocation Questionnaire. This usually occurs when it is clear that the claim is for £5,000 or less and should therefore go into the Small Claims Court jurisdiction. The fee however is still payable.

The Allocation Questionnaire will ask for information which will give the Judge a clearer idea of the issues between the parties. The Questionnaire asks about the following issues: -

1. Whether the parties want the Court proceedings to be "stayed" i.e.: put into suspension for a period of one month to see if a settlement can be reached.
2. If the final Trial needs to be held at a different location and if so why.
3. A clear indication of the amount in dispute.
4. Some idea as to the number of witnesses that each party might be calling.
5. Confirmation as to whether Expert Evidence and Expert Reports will be needed.
6. Which Track the Solicitor believes is most appropriate for the case. Small Claims Track relates to claims of £5,000 or less. The Fast Track relates to claims of between £5,000 and £15,000 and the Multi Track applies to claims of over £15,000. Different procedures apply depending on the Track that is adopted. The Track can also be determined not necessarily by the amount in dispute but whether there are any complicated legal issues.
7. An indication as to how long the parties think they will need for the final Trial and if there are any dates they already know need to be avoided.
8. The timetable and items that the Solicitors believe will need to be dealt with before the case is ready for final Trial. These are referred to as Directions.
9. Some idea as to the legal costs already incurred.
10. Any other information, which will be of use to the Court.

Each party must file the Allocation Questionnaire with the Court by the date specified. They must also supply a copy of their completed Allocation Questionnaire to the other side. The Judge will then look at the two Allocation Questionnaires and the Court file and will decide what Directions are appropriate and whether or not a Case Management Conference is necessary.

The Court will then send out an Order which will set out the timetable the Court requires, the list of things that will have to be done and any date fixed for the Case Management Conference. In most cases the Court will also fix a "window" for the final Trial. This is not a fixed date but an indication that the final Trial will be arranged within that window i.e. the final Trial will take place between the 15th July 2006 and the 30th September 2006.

Standard Directions

In most cases the following pieces of work will have to be carried out before the Court will allow the final Hearing to take place.

1. Disclosure of documents – This means that each party has to disclose to the other a list of documents that have any relevance to the proceedings. The list must consist of all documents in your possession or control. This means that documents must be disclosed even if they are not necessarily helpful to your case. Failure to make full and proper disclosure can be fatal to your case at the end of the day. If there are documents on the other party's list that you don't have copies of then you can request copies.

The other side are entitled to charge for the cost of those copies. If documents come to light later there is a continuing obligation to disclose them to the other side and to explain why they have been disclosed late. Sometimes it may be necessary to ask the Court's permission to include documents that have not been disclosed in time.

2. Witness Statements of Fact – These are the Statements of the people you intend to call at the final Trial to give evidence about the factual issues e.g.: what they saw, said or did. Witness Statements have to be exchanged simultaneously so that neither side has an opportunity to tailor their own Statements having seen the others in advance.

The Witnesses must be prepared to attend Court so that they can be cross-examined on their evidence at final Trial. If a Witness is not prepared to attend a final Trial their Witness Statement would have little value. Sometimes it is possible for Witness Statements to be agreed e.g.: when there is nothing particularly contentious in them in which case it is then not necessary for the person who made the Statement to physically attend Court. In certain cases the Court may decide that the Statements be disclosed sequentially rather than simultaneously. The original Witness Statements are always lodged with the Court.

3. Expert Evidence – The Court has to agree that Expert evidence can be called. Sometimes the Court will insist upon an independent Expert being jointly instructed by both parties so that one Report is prepared. The instructions to the Expert have to be agreed by both parties and usually they will pay half the cost each. More commonly each party has their own Expert. The Expert has a duty to the Court not to the person paying for the Report.

Expert's Reports will have to be served on the other side and once both sides have seen the Reports then a meeting will take place between the Experts to try and narrow down the issues. This meeting will be on a without prejudice basis i.e. the contents of the meeting cannot be disclosed at the final Trial. The Experts are under a duty to try and narrow the issues. They will be required to file a joint Report which will set out the issues upon which they agree and those upon which they disagree and why. Both the Reports and the joint Report have to be lodged with the Court.

The Court also decides whether to give permission for the Experts to attend the final Trial in person and be cross-examined as to their Reports. It is for the Judge at final Trial to decide which Expert evidence he prefers. In Fast Track cases it is unusual for the Experts to be present at the final Trial. Normally the Court will rely upon their written Reports.

4. Schedules of Loss and Counter Schedules – If one party is claiming losses which are ongoing then they will be required to serve an up to date Schedule of those losses on the other side. The other side then have the opportunity of filing a Counter Schedule of why they believe those losses are not correct.
5. Case Management Conference – This will be fixed for a date well before the final Trial date. In complicated cases there may be two or three Case Management Conferences before the final Trial takes place. The Case Management Conference will be held at the Court and the parties and their Solicitors are required to attend. If one of the parties is a business or Limited Company then someone senior from the business or Limited Company has to be present with their Solicitor. This is because the Case Management Conference fulfils two functions.

Firstly to see whether with the assistance of the Judge settlement discussions can achieve any final agreement. Secondly to check whether the Directions ordered by the Court have been complied with, if not what new dates need to be fixed and whether there are any other Directions which are necessary. The Judge who hears the Case Management Conference cannot hear the final Trial. This is because offers to settle and other information, which would not normally be permitted to be discussed at the final Trial, is encouraged at the Case Management Conference.

Often the Judge will give an indication as to where he feels a party's weaknesses are in an effort to try and encourage the parties to reach a settlement. Consequently a Case Management Conference can last between one and two hours.

6. Listing Questionnaires – This is a document that has to be completed by each of the parties' Solicitors. The Court will decide the date by which it has to be filed with them. Its purpose is to confirm that a full final Trial is still needed and to update the Court as to the number of Witnesses that will be called, the amount of time that the parties will need and the issues that remains in dispute. In the High Court the person who brings the claim also has to pay a fee of £400 when the Listing Questionnaire is filed. In the County Court the fee is £300 if it is a Multi Track case and £200 if it is any other type of case.

Sometimes the Court will dispense with the filing of a Listing Questionnaire but the fee still has to be paid by the person bringing the Court action. The fee of £200 is not required in a Small Claims Court case. The Court will then (if it has not already done so) confirm the final Trial date. This will only be a specific fixed date if there are a number of Witnesses particularly Expert Witnesses. It is not unusual for the Court to list a number of cases to be heard at the same time.

The Court will then allocate priority. If you are the first in the List it is likely that the case will be heard on that date. However if you are a second fixture it means that there is a case in front of you. Your case will only take place on that date if the case in front of you settles beforehand. Sometimes you will only be told the first working day before the proposed Trial date that it will not be going ahead. These decisions are matters for the Court and are wholly outside the control of your Solicitors. The Court also reserves the right to change the venue at short notice.

If your case cannot go ahead because the case in front of it is proceeding then you will be given a new date and you will have first priority for that new date. The Court Listing Office will try and accommodate Trial dates convenient to yourself, your Witnesses and your Lawyers. However the fact that the Barrister of your choice is not available is not regarded as a sufficiently good reason not to fix the Trial date. Once a Trial date has been fixed it will only be changed if the Court decide to change it or if there are very exceptional circumstances.

In most cases the Court are quite happy for the parties to agree to extend the times for completing the other Directions but they will not allow the parties to put the final Trial in jeopardy. Requests by the parties to change a Trial date that has been fixed for some time are highly unlikely to succeed.

7. Other Information – If issues arise during the course of a Court action, which are not covered by the standard Directions, then either party can make an Application to the Court. Usually your Solicitor attending the Hearing can deal with these Applications. Sometimes your Barrister will be needed and on occasions your presence will also be needed.

If you make an Application to the Court that fails then it is likely that the Court will decide that you have to pay the other side's costs in dealing with that Application. Those costs will be assessed on the day of the Hearing and an Order made specifying the amount of the costs that have to be paid and the date by which payment has to have been paid.

Although the timetable for standard Directions can on occasions be revised it is extremely important that the dates are complied with. If you cannot provide us with the documentation/information in good time it may make it impossible for us to meet those deadlines.

The Court can impose sanctions for such failures and in serious cases it can lead to the Court refusing to allow you to proceed with your case or proceed with your Defence. Please advise your solicitor as early as possible if you are likely to have problems with meeting a Court imposed date.

The two Allocation Questionnaires and the Court file and will decide what Directions are appropriate and whether or not a Case Management Conference is necessary.

The Court will then send out an Order which will set out the timetable the Court requires, the list of things that will have to be done and any date fixed for the Case Management Conference. In most cases the Court will also fix a "window" for the final Trial. This is not a fixed date but an indication that the final Trial will be arranged within that window i.e. the final Trial will take place between the 15th July 2006 and the 30th September 2006.

Head Office

CAMBERLEY OFFICE
Riverside Way
Watchmoor Park
Camberley, Surrey
GU15 3YQ

tel: 01276 686222

ALDERSHOT OFFICE
4 Station Road
Aldershot
Hampshire
GU11 1HU

tel: 01252 322451

BAGSHOT OFFICE
51 Guildford Road
Bagshot
Surrey
GU19 5NG

tel: 01276 451451

WOKINGHAM OFFICE
Market Chambers
3&4 Market Place
Wokingham, Berkshire
RG40 1AL

tel: 01189 774045