



- Pre-trial Procedures in civil cases are governed by the Civil Procedure Rules (CPR) 1998 **except for cases involving insolvency and family proceedings.**
- CPR's overriding objective is ensuring that cases are dealt with **justly and at proportionate costs.**
- To achieve its objective, the CPR looks at matters such as how complex a case is and the amount of money involved as these influence the way in which a case is handled.
- The courts' role is to ensure that the **parties are on equal footing** and that actions are **justly resolved as swiftly as possible.**
- Practice Directions- supplement the CPR rules , explaining to parties what the court expects of them, what they can expect from the court and how they must cooperate with each other.

Pre-Trial Civil Procedure.

Introduction.

CIVIL PROCEDURE RULES – OVERRIDING OBJECTIVE

The CPR requires that all cases are dealt with in a way that enables the court to deal with cases justly.

This includes:

- ❖ Ensuring parties are on an equal footing;
- ❖ Dealing with the case in ways which are proportionate
- ❖ Ensuring that the case is dealt with expeditiously and fairly.



- The CPR rules place the ultimate responsibility of case/litigation handling to the courts.
- Judges are to be actively engaged in case management by giving directions as to how the case should proceed.
- Courts therefore must actively manage cases in order to achieve the CPR's overriding objective.
- Hence focus is placed on identifying the key issues early **in order avoid parties pursuing every point which would save time & expense.**
- Judges therefore can set a timetables for the completion for preparatory steps & can limit the amount of evidence parties can point out/present to support their case.
- The courts actively encourage cooperation between the parties regardless of the adversarial nature of cases. **To push their objective of cooperation, the courts advocate parties to use alternative dispute resolution & settlements.**
- If a party should fail to comply with any case management orders, the CPR provides a number of sanctions to remedy this.
- Such sanctions include- debarring a party from presenting evidence in a particular form, or from a particular witness or a party's behaviour is taken into account when deciding costs.
- Courts can even strike out a part of or the entire case where it is found necessary to do so.



- After parties have started case proceedings, each case is categorised into one of three case management tracks- the small claims track, the fast track and the multi-track.
- The aim of this categorisation is to ensure that each matter is dealt with in the way that is **most appropriate**. The court decides which track is most suitable for the case at hand.
- Courts look at the **complexity of issues, the nature of the case and the financial value** involved in deciding the track of a case.
- The parties provide the relevant information required by the court by filling in allocation questionnaires.
- Once the court has decided the track of a case, it informs the parties through a **notice of allocation**.
- The court can decide that further information is required and/or decides that an **allocation hearing** is needed to determine the appropriate track.



- Allocation Questionnaire- The Questionnaire must be returned to the Court within 14 days. If the claim is between £1,500 and £10,000 a further fee of £40 is payable. The court expects parties to have discussed, and where possible agreed on: • if the case can be settled or not • which is the most appropriate track for the claim • how long they think the hearing will last, and • if possible, how long they think they will need to prepare their case and the arrangements for exchanging evidence.
- If the one party will not co-operate this should not delay the other from returning their form to the Court.
- When the court receives the completed Allocation Questionnaires from both parties, the judge will decide if the claim should be allocated to the appropriate track.
- The judge will take account of what has been said in the Claim, Defence and Allocation Questionnaires and will look specifically at the amount in dispute, the timetable and the evidence needed.

Example of an Allocation Questionnaire.



Allocation questionnaire (Small claims track)	
Completed by, or on behalf of, (print name) <div></div>	Name of court <div></div>
	Claim No. <div></div>
	Last date for filing with court office <div></div>
who is the [Claimant][Defendant] in this claim.	
<p>Please read the notes on pages 4 before completing the questionnaire.</p> <p>You must complete all sections of this questionnaire. It will be used to assist the court in the management of the claim.</p> <p>You should note the date by which it must be returned and the name of the court it should be returned to since this may be different from the court where proceedings were issued. This information is shown on the Form N152 which came with this questionnaire.</p> <p>If you have settled this claim (or if you settle it on a future date) and therefore do not need a hearing, you must let the court know immediately.</p>	
A Settlement	
Would you like to use the free small claims mediation service provided by HM Courts & Tribunals Service, to help you settle your claim with the other party? If you tick Yes, you must still complete the rest of this form.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B Location of hearing	
Is there any reason why the case needs to be heard at a particular court? If Yes, say which court and why	<input type="checkbox"/> Yes <input type="checkbox"/> No
<div></div>	
C Track	
Do you agree that the small claims track is the most suitable track for this claim? If No, please say why	<input type="checkbox"/> Yes <input type="checkbox"/> No
<div></div>	
HM Courts & Tribunals Service Allocation questionnaire (Small claims track) (03/12)	HM Courts & Tribunals Service Allocation questionnaire (Small claims track) (03/12)



Allocation of cases

- ▶ Following the new Civil Procedure Rules, all cases will be allocated to three tracks depending on value of claim:
 - Small claims track
 - Fast track
 - Multi track
- ▶ Judge in High or County Court decides which track to use with help of allocation questionnaire filled out by claimant and defendant, once the defence has been served

As a Litigant in Person, costs are based on your financial loss – what do you do for a living?





- Its objective is to settle the smaller disputes in a more informal & therefore less time consuming manner.
- Designed for cases of financial value up to 10,000 pounds.
- Claims under 5,000 pounds are sent first to mediation.
- Parties are encouraged to appear without legal representation.
- Rights of appeals are limited to serious irregularities in the proceedings or a mistake of law.
- Standard directions are given to the parties by the court.
- These directions state that parties must serve copies of supporting documents & bring the originals to the hearing.
- Parties will also be informed of the date & duration of the hearing.
- Where the court requires clarification on some issues, the court can give **special directions**.
- The CPR also provides tailored directions for certain small claims such as Road Traffic Accidents.

SMALL CLAIMS

❖ Under £10,000 and personal injury £1,000.



❖ People are encouraged to represent themselves in order to keep costs down.



❖ Winner cannot recover the cost of their lawyer from the losing party.



- Most cases not suitable for small claims track, valued between 10-25,000 is allocated fast track, as well as non-monetary claims such as remedies of injunction & specific performance.
- Cases within this track usually last one day-about 5 hours.
- Once a case is allocated to this track, the court orders parties to disclose documents, serve witness statements & expert reports & inform them of the timetable they must follow.
- The court will set a date for the proceedings not more than 30 days later; or The court can also set a trial window- a period of up to 3 weeks during which time the trial will take place.
- The short time span between the start of proceedings & trial is the reason for the tracks name-fast.
- Sanctions are placed on the party which does not comply with the directions timetable, however the trial's date would not be postponed.

Fast Track Cases

- ▶ Cheaper and faster method of dealing with claims worth between £5,000 and £25,000
- ▶ Cases tried either by District Judge or Circuit Judge depending on complexity
- ▶ Court sets a strict timetable for pre-trial matters
- ▶ Maximum delay of 30 weeks between directions and trial
- ▶ Hearing is limited to one day only and usually only one expert witness allowed
- ▶ Trial will be heard in an open court with more formal procedure than for small claims





- Covers all cases the other 2 tracks do not.
- Therefore covers cases over 25, 000 pounds in value & most substantial High Court actions.
- Deals with a variety of cases hence court has to be flexible in their approach.
- Court again gives directions on how the case would proceed, the timetable & the trial date.
- Where cases are more complicated and need more detailed case management, the CPR provides an array of case management tools- case management conferences, pre-trial reviews & directions.
- A case management conference helps the court identify key issues of the dispute.
- A pre-trial review allows the courts to assess how compliant the parties are with directions. It also provides chance for the encouragement of settlement between the parties.
- Multi-track cases are not given automatically given a trial period, instead the parties will be told by the court when it is practicable for them to do so.
- The trial period is usually a week long, parties are normally told that the trial would begin on a day in a given week.

Multi-Track Cases

- ▶ For claims worth more than £25,000 and those that raise complex points of law
- ▶ Dealt with by Circuit Judge
- ▶ Judge will “direct” the case and can set timetables according to the needs of the case
- ▶ Trial lasts more than one day and maybe involve multiple witnesses
- ▶ Claims over £50,000 may be sent to High Court



Initiating Proceedings- initiating a claim.



- Every case is started by the claimant-the person who wishes to bring the action, against the defendant- the person against whom an action is brought.
- Litigation is commenced when the claimant issues a **Claim Form** at court. This is a brief document that sets out the basis of the claim. The date of issue starts the litigation clock, and various steps have to be taken within short timescales thereafter.
- First, the claimant has to serve the Claim Form on the defendant- detailing which court they wish to issue proceedings in, the parties & the nature of the claim, remedies sought & if monetary, what is the value of the claim.
- The claim form must be served on the defendant-via personal service, or 1st class post, or fax or other electronic forms of communication.
- This has to be done within four months or six months, depending on whether the defendant is served in or outside England and Wales.
- The claimant must also serve the **Particulars of Claim** to the defendant which can be served with the claim form or separately.
- The particulars of the claim sets out basis of the claim against the defendant, allegations made & facts to support those allegations.
- It will also contain reference to any point of law on which the claim is based, & the name of any witness the claimant intends to call at trial.



- A defendant does not need to do anything until he receives the particulars of claim.
- Once served, the defendant has 14 days to respond. He can therefore respond in three possible ways.
- He should first serve an **Acknowledgement of Service**, in which it states whether he intends to defend the claim (and if he intends to challenge jurisdiction). This acknowledgment of service can also be used by a defendant where his defence is out of time- due to lack of sufficient information.
- He can **admit to the claim**, he can **file an admission** on all or part of the claim. Judgment would then be made for the claimant for the remedy asked for on the claim form.
- He can **defend the claim**, the defendant has to serve its Defence and details of any **Counterclaim** within a short period.
- The defendant **can do nothing therefore failing to acknowledge the Claim Form, or serve a Defence**, the claimant is then entitled to enter a default judgment against the defendant at this early stage.
- If a Defence is served, the claimant will usually respond by serving a **Reply**, and must serve a **Defence to any Counterclaim**, if there is one.
- **A claimant does not have to respond to a defendant's defence and failure to so do is not an admission.**
- However in terms of a defendant, **where he fails to reply to specific accusations in the Claim form or particulars of claim**, it is an admission of guilt. A reply from the claimant can follow their defence against a counterclaim, if there is one.



- Civil court proceedings contain quite number of documents as aforementioned- **Claim form, Particulars of claim, defence, counterclaim, reply and defence to a counter claim.**
- Collectively, these documents are known as **statements of case.**
- Statements of case are public documents and details of their content can be obtained by non-parties to the claim, unless otherwise ordered by the court.
- Hence every statement of case must be verified by a **statement of truth**- this is a statement to the effect that the party putting forward the document believes that the facts stated in it are true.
- The statement must be signed by the party in question or his legal representative. Any document containing a statement of truth can be used in evidence.
- Signing a document that one does not honestly believe in the truth of the document is a **contempt of court.**

CONTEMPT OF COURT. Anything which plainly tends to create a disregard of the authority of courts of justice; as the open insult or resistance to the judges who preside there, or disobedience to their orders. Contempt of court is punishable by the immediate imprisonment of the offender.

contempt of court. Conduct tending to bring the authority and administration of the law into disrespect or disregard, interfering with or prejudicing parties or their witnesses during the litigation, or otherwise tending to impede, embarrass, or obstruct the court in the discharge of its duties.



- Courts give directions in all cases that all parties should give each other information concerning the basis of their claim.
- The formal procedure for this exchange of documents is called **disclosure**.
- The purpose of disclosure **is to make the other party aware that a document exists or not**. Parties peruse copies of documents under different rules of inspection.
- Standard disclosure requires the parties to disclose all relevant documents whether they support or hinder their case or the other party's.
- The duty is limited to documents which are or have been in the party's control & applies for the duration of the case.
- Each party can reasonably search for documents.
- **What is reasonable depends on a number of factors**-the nature & complexity of the case, the number of documents involved & the significance of the document likely to be located in the search.
- Duty of reasonable searches only apply to small claims cases, fast track cases and personal injury cases on the multi-track.
- Courts can also order **specific disclosure** – ordering a party to disclose a particular document, carry out a particular search & disclose all documents discovered as a result.
- Specific disclosure is needed where a party failed to carry out the standard disclosure duties properly.



- Parties try to prove disputed facts by placing evidence before the court.
- The court via case management can control this process by limiting the number of lay or expert witnesses each party may call- the court has authority to only allow one expert witness.
- Court gives directions to parties to serve witness statements- written documents which contain the evidence by a witness, which the party intends to rely on at trial.
- The court can decide on which issues it actually requires evidence, and how it is to be provided.
- The court can exclude evidence which would otherwise be admissible in exercising its case management powers.
- The general rule is that evidence will be given orally at trial & via written statements at hearings at hearings that are not trials.
- At a hearing, a party can apply to cross-examine someone who has provided a written statement.



- **Default Judgment**- a defendant must respond to a claimant's claim within a certain time of receiving the particulars of claim.
- Failure to file an acknowledgement of service or a defence would result in default judgment being entered in favour of the claimant- this means the court will give judgment without the case being tried.
- The procedure for this type of judgment depends on the nature of the case- money claims can be entered into a **request-for-judgment procedure**.
- A claimant requests that the court enter judgment for him, & the court does this **without consideration of the merits of the claim**.
- Otherwise the claimant would apply to the court which then considers the case at a hearing & decides what the claimant is entitled to on the basis of his statement of case.
- If entered wrongly, a judgment can be set aside , or if it appears to the court that the defendant has a real prospect of successfully defending the claim. A defendant must apply for a default judgment to be set aside.
- **Summary Judgment**- after a defendant has filed a defence or an acknowledgement of service either party can apply to the court for a summary judgment- judgement without trial.
- **Application notice**- the manner through which parties apply for the judgment- which must be supported by evidence.
- Summary judgment is granted by the court where it finds the **respondent- person applying for it whether claimant or defendant**, has no real prospect of success.
- Hence where sought by claimant, he must show that the defendant has no defence, where filed by defendant he must show that claimant has no real prospect of winning.



- Legal aid is a means through which the Government provides funding for those unable to fund their own cases **via legal representation or legal advice**.
- The system is governed by the **Legal Aid Agency** which includes the **Civil Legal Aid Service**- providing advice & representation in civil cases.
- It is only available to a limited number of civil claims- where available it may cover all stages of a case.
- **Legal Help**- a solicitor provides early stage advice & prepares a case for court.
- **Help at Court**- where a solicitor speaks on a client's behalf at court.
- At its widest, legal aid would be provided for full Legal Representation during trial, only available through fulfilment of a **means test and a merit test**.
- All legal aid is subject to a strict means test- applicants must provide information about their income and any existing capital to show they are financially eligible.
- One of the main criticisms of the present system is that the financial limits are far too stringent & exclude many people who cannot to become involved in legal proceedings.
- In addition, legal aid is not available for all types of cases.