

PRACTICE DIRECTION NO 16 of 2021

“FAST TRACK SCHEME”: ASSESSMENT OF DAMAGES AND TRIAL OF SIMPLE NEGLIGENCE CLAIMS

PREAMBLE

This Practice Direction is issued by the Honourable Chief Justice after consultation with Judges in respect of the management of assessment of damages and the trial of simple negligence cases in the Civil Division of the Supreme Court.

It has as its purpose the establishment of a “Fast Track Scheme” for the assessment of damages, the trial of simple negligence claims and the improvement of scheduling generally, to enable the timely completion of these matters.

The “Fast Track Scheme” gives effect to **Differentiated Case Management (DCM)**, which is the application of effective case flow management by initiating a set of principles and techniques for managing individual cases depending on their complexity, in a manner that ensures that each case is allocated sufficient resources, delay is minimised, backlog eliminated and each matter is completed within twenty-four (24) months from the date of filing.

PART A: ESTABLISHMENT OF THE “FAST TRACK COURTS” IN ORDER TO GIVE EFFECT TO DCM PRINCIPLES

1. Commencing on the 16th September 2021, all matters for assessment of damages and the trial of simple negligence claims will be dealt with by a team of at least three (3) Judges designated for that purpose, who will sit in Courts styled “Fast Track Courts: DCM1”.
2. Each Court will have its own List/Docket and the Judge assigned to the Court will have conduct of the assessment of damages and simple negligence trials on the List/Docket from the date of their entry into that Court until the completion of the assessment or trial.
3. Claims filed in the Supreme Court which are grounded in negligence and all matters which are fixed for assessment of damages will, from the 16th September 2021 proceed along one of two (2) tracks towards completion, a “Fast Track” and “Regular Track” respectively, based on criteria set out below.

PART B: FAST TRACK ELIGIBILITY (ASSESSMENT OF DAMAGES)

4. The following are the eligibility criteria for negligence cases, whether or not involving a counterclaim, which are to proceed on the Fast Track for assessment of damages.

- (i) Claims for which assessment of damages hearings have been fixed after entry of default judgments in accordance with CPR 16.2; **or**
- (ii) Applications for judgement to be entered for damages to be assessed on an admission for which an assessment of damages hearing has been fixed in accordance with CPR 16.3; **or**
- (iii) Claims for which the court directs that there is to be a trial of an issue of quantum and has fixed a period within which the assessment of damages is to commence in accordance with CPR 16.4; **and**
- (iv) The claim does not involve complex issues of law or fact;
- (v) The damages claimed are in relation to injury, loss or damage that is not extremely serious or severe, and where applicable, the Permanent Partial Disability (PPD), whether partial or permanent, does not exceed twenty percent (20%) of the whole person;
- (vi) There are no more than four (4) parties to the litigation;
- (vii) There are no more than six (6) witnesses (inclusive of the parties to the litigation where they propose to give evidence);
- (viii) All parties are represented by counsel;
- (ix) There are no more than two (2) expert witnesses and the parties have agreed, or the court has ordered, that the expert evidence will be given in written reports thereby obviating the need for cross examination of the expert witnesses; and
- (x) Save in exceptional circumstances and where the matter is otherwise well suited for proceeding along the Fast Track, matters for which the witnesses do not require any special accommodation by the Court.
- (xi) Such other case as the Court or Judge deems appropriate.

PART C: FAST TRACK ELIGIBILITY (SIMPLE NEGLIGENCE TRIALS)

5. The following are the eligibility criteria for negligence cases, whether or not involving a counterclaim, which are to proceed on the Fast Track for trial.

- (i) The claim does not involve complex issues of law or fact;
- (ii) The injury, loss or damage is not extremely serious or severe, and where applicable, the PPD, whether partial or permanent, does not exceed twenty percent (20%) of the whole person;
- (iii) There are no more than four (4) parties to the litigation;
- (iv) There are no more than six (6) witnesses (inclusive of the parties to the litigation where they propose to give evidence);
- (v) All parties are represented by counsel;
- (vi) There are no more than two (2) expert witnesses and the parties have agreed, or the court has ordered, that the expert evidence will be given in written reports thereby obviating the need for cross examination of the expert witnesses;

- (vii) The trial, with the exception of the delivery of judgment may be concluded in one (1) day; and
- (viii) Save in exceptional circumstances and where the matter is otherwise well suited for proceeding along the Fast Track, matters for which the witnesses do not require any special accommodation by the Court.
- (ix) Such other case as the Court or Judge deems appropriate.

PART D: REGULAR TRACK (ASSESSMENT OF DAMAGES AND NEGLIGENCE CLAIMS)

6. Where an assessment of damages or a negligence matter has not been selected or ordered to proceed to assessment or trial on the Fast Track in accordance with this Practice Direction, it shall be regarded as proceeding on the Regular Track for assessment of damages or trial as appropriate and managed in a manner which advances the overriding objective of the Civil Procedure Rules (CPR) to deal justly with cases.

PART E: PROCEEDINGS IN “FAST TRACK COURTS: DCM 1”

Assessment of Damages hearings fixed for 2021 Michaelmas and 2022 Hilary Terms (All Causes of Action)

7. All matters for which assessment of damages hearings have been fixed for the 2021 Michaelmas Term and the 2022 Hilary Term will be allocated among the Judges sitting in the “Fast Track Courts: DCM 1” and managed to completion, having regard to:
 - (i) the simplicity or complexity of the case;
 - (ii) representation by a party that he was or is in a position to prove damages; and
 - (iii) the Court’s overriding objective to deal with cases justly.

Fast Track Assessment of Damages (Negligence)

8. The Registrar shall fix all the matters that have been selected or ordered to proceed on the Fast Track for Pre-Trial Review before a Judge of the “Fast Track Courts: DCM 1”.
9. The Registrar is to give Notice of the of the Pre-Trial Review at least twenty-eight (28) days before the date fixed.
10. Notices of Pre-Trial Review may be sent by electronic mail and a “List of Fast Track Assessment of Damages Pre-Trial Review” matters is to be posted on the Supreme Court Website.
11. At the Pre-Trial Review for a Fast Track Assessment of Damages the Judge will determine the state of readiness for assessment and shall not list any matter for an assessment of damages hearing unless the matter is ready.

12. The Pre-Trial Review may be heard virtually in keeping with earlier Practice Directions and shall not be fixed for more than the fifteen (15) minutes.

Fast Track Trials (Simple Negligence)

13. The Registrar shall fix all the simple negligence matters that have been selected or ordered to proceed to trial on the Fast Track for Pre-Trial Review before a Judge of the “Fast Track Courts: DCM 1”.
14. The Registrar is to give Notice of the of the Pre-Trial Review at least twenty-eight (28) days before the date fixed.
15. Notices of Pre-Trial Review may be sent by electronic mail and a “List of Fast Track Simple Negligence Matters for Pre-Trial Review” is to be posted on the Supreme Court Website.
16. At the Pre-Trial Review for a Fast Track Simple Negligence matter the Judge will determine the state of readiness for trial and shall not list any matter for trial unless the matter is ready.
17. The Pre-Trial Review may be heard virtually in keeping with earlier Practice Directions and shall not be fixed for more than the fifteen (15) minutes.

Regular Track Assessment of Damages (All cases)

18. All assessments which remain on the Regular Track whether for claims in negligence or otherwise, for which assessment of damages hearings have been fixed by the Registry will be allocated among the Judges sitting in the “Fast Track Courts: DCM 1” to be managed by them until their completion, having regard to:
 - (i) the simplicity or complexity of the case;
 - (ii) representation by a party that he was or is in a position to prove damages; and
 - (iii) the Court’s overriding objective to deal justly with cases.
19. Where there are assessment matters for which no assessment of damages hearing dates have been fixed by the commencement of the 2021 Michaelmas Term, the matter shall be listed for Pre-Trial Review before a Judge in the “Fast Track Courts: DCM 1” who will make a determination as to its state of readiness, whether the case is to proceed on the Fast or Regular Track, and issue directions accordingly.

Assessments and Trials

20. A Judge of the “Fast Track Court: DCM 1” will manage assessment hearings and simple negligence trials to ensure that the time allotted for each is strictly adhered to, save in exceptional circumstances.
21. In keeping with CPR 29.1 (3), the Judge may limit cross-examination.
22. Fast Track Assessment of Damages will be scheduled for a maximum period of sixty (60) minutes where they are uncontested with only one witness and

- otherwise up to a maximum period of one (1) day; and Fast Track Trials of Simple Negligence matters limited to a maximum period of two (2) days.
23. Witness statements are to be utilised in accordance with orders made at a Case Management Conference, Pre-Trial Review or other event where those orders are made.
 24. Written submissions must be filed prior to the assessment hearing or trial as ordered by the Court, and oral submissions will be limited to matters arising on cross examination or as otherwise allowed by the Judge. Counsel will not be permitted to read or repeat the written submissions to the Court.
 25. The Judge conducting the Assessment of Damages or Trial will be expected to stipulate the length of time for any oral submissions at the start of the relevant hearing.

PART F: ADJOURNMENTS

26. To ensure hearing date certainty and the timely disposal of matters fixed for assessment of damages and for trial in the “Fast Track Courts: DCM 1” in accordance with this Practice Direction, adjournments will only be granted in exceptional circumstances and upon production of satisfactory proof of the necessity for an adjournment.
27. Requests for adjournments due to administrative errors or failures on the part of counsel or parties should be avoided as a Judge in the “Fast Track Courts: DCM 1” is at liberty to exercise all case management powers including the power of striking out under CPR 26.4.

PART G: JUDGMENTS

28. The judgment of the Court will be delivered orally. Counsel are to attend and prepared to make a note of the reasons for judgment. The general rule is that written reasons will only be provided when an appeal is filed, or in the discretion of the judge.

Dated the 9th day of September 2021


Bryan Sykes OJ, CD
Chief Justice