

SCOTT SCHEDULES

Summary: 2005 DCR rule 45D imposes obligations on parties to actions on building and engineering contracts to apply for directions in relation to this filing of Scott Schedules. The Circular provides guidance on the use of Scott Schedules in the Court, and obviates the need to refer back to Atkin's Court forms for the basic requirements.

1. Nature of a Scott Schedule

A Scott Schedule is a form of particulars usually ordered in actions where a party's case is made up of a substantial number of claims. Scott Schedules are named after their inventor, His Honour George Scott, Official Referee of the UK High Court of Justice 1920 to 1933. The Scott Schedule allows the Court determining the action to have conveniently before it a document which gives a full description of each claim and the contention of each party with respect to it.

The objectives sought to be achieved by the Court in orders made relating to Scott Schedules are to ensure that when the action is entered for trial:

- (a) each individual item claimed is particularised to a level enabling it to be conveniently identified by the Court, parties and their witnesses;
- (b) the amount asserted by both parties in relation to each individual item is quantified;
- (c) the contentions of each party in relation to each individual item are articulated;
- (d) areas of agreement relating to the description of the item and quantum are identified (for example, a defendant may agree that the work described in the item was requested, but may argue that the quantum charge was not as set out in the contract was not reasonable); and
- (e) the aggregate of the claims and areas of admissions of each party are known.

2. Obligation to seek directions

2005 DCR rule 45D imposes an obligation on the plaintiff in an action on a building or construction contract to apply for directions as to whether the plaintiff is to lodge a Scott Schedule. The application must be made within 75 days after filing the first defence.

In some actions on a building contract, the plaintiff will claim on the contract, say, for the amounts due and the defendant will defend the claim on the basis of defective workmanship, and may counterclaim. In that scenario, it would be open for a plaintiff to seek directions that the obligation be on the defendant to file and serve the Scott Schedule.

The Court also has a general case management power to order the filing of Scott Schedules (2005 DCR rule 24(1)). Another type of action in which a Scott Schedule may be beneficial is an action for breach of the covenant to repair in a lease where multiple instances of breach are alleged.

The Court will monitor compliance with 2005 DCR rule 45D as part of its ongoing case management oversight.

3. Usual orders

The application for directions pursuant to 2005 DCR rule 45D should contain the orders sought. It is, however, open to a plaintiff to submit that no Scott Schedule be ordered in the particular circumstances of the case.

The usual orders are as follows:

1. By not later than [insert date], the Plaintiff serve on the Defendant by email a draft schedule in the form of [Schedule [A, B, C, D, E or F as appropriate - to Circular to Practitioners CIV 2007/ 3 or in the form attached to this application] (“Scott Schedule”) relating to the claims in paragraphs XX and YY of the Statement of Claim dated [insert].
2. By no later than [insert date], the Defendant serve on the Plaintiff by email a further draft of the Scott Schedule having duly completed columns 5 and 6 [or other columns as the case may be].
3. By no later than [insert date], the Plaintiff either:
 - (a) file and serve a final version of the Scott Schedule; or
 - (b) file and serve a memorandum stating that the parties have conferred to try and resolve the outstanding issues relating to the form of the Scott Schedule, setting out the outstanding issues, annexing the latest drafts of the Scott Schedule and requesting the Court to list the action for a directions hearing.

Where one party is a litigant in person or does not have email, the Court can tailor the form in which the Scott Schedule is served. For example, it may be able to be served by exchanging computer discs.

The formats in the Schedules to this order are illustrative only. They are broadly based on the formats in Atkin's Court forms. Where a party seeks to customise a format, the format should appear in the Schedule to the orders sought.

The formats in the Schedule to this order depart from more traditional formats in that they include a requirement to identify relevant discoverable documents. The Court considers this to be an important reform initiative and so will be slow to remove this requirement from the order.

4. General case management considerations

If the proposed timetable will cause the parties to breach the Entry for Trial milestone, the parties should seek orders extending the Entry for Trial milestone to an appropriate date after the finalisation of the Scott Schedule.

The Court is concerned to ensure that the parties do not have to file with the Court multiple documents containing the same particulars. To that end:

- (a) A party may foreshadow in a pleading that full particulars will be provided by way of Scott Schedule in accordance in 2005 DCR rule 45D; and / or
- (b) the party pleading the damages claim to which the Scott Schedule relates may seek an order that the Scott Schedule stand as that party's schedule of damages for the purpose of 2005 DCR rule 45C (either in whole or in part).

These comments should in no way be taken as limiting the discretion of the Court to make whatever orders the Court considers appropriate in relation to particulars on application by any party.

5. Expert evidence

Where the substance of the Scott Schedule is likely to be based on expert evidence (for example, rectification costs based on the report of a builder), the parties should seek to align the drafting of the Scott Schedule with the exchange of expert's reports. The Court's practice relating to the exchange of expert reports is set out in Circular to Practitioners 2007/2 .

In some types of cases, it may make sense to incorporate the expert evidence into the Scott Schedule. Schedules E and F are illustrative of how this could occur.

MICHAEL GETHING
Principal Registrar

