

Guide to the Litigation process

This Guide gives a general overview of the litigation process in England and Wales

The Guide does not cover every possible stage of the process, but highlights those which are likely to apply in most cases. The particular steps required and timetable followed will depend on the facts and circumstances of the case.

The rules governing litigation are called the Civil Procedure Rules (CPR). When the CPR requires a party in litigation to take a particular step in the proceedings, it is very important that they comply, and within the relevant time limit.

The court has the power to impose penalties on a party that does not comply with the CPR (or with court orders).

These penalties can include costs sanctions or striking out all or part of a claim.



Statements Of Case

Each party to the proceedings must prepare certain documents that contain the details of the case they wish to advance. These documents are called statements of case and they must be filed at court and served on the other party. The documents are as follows:

Claim Form and Particulars Of Claim

Proceedings are started by the Claimants issuing a claim form at court and paying the required court fee. The claim form contains a concise statement of the nature of the claim and the remedy sought (for example, damages). It must also include a statement of value of any money claim. The court fee to issue proceedings is 5%, so a claim for £50,000 will require the Claimants to pay a fee of £2,500.

The Claimants will submit particulars of claim with or shortly after the claim form, which set out full details of the claim, including the facts on which the claim is based.

Once issued, the claim form and particulars of claim are sent to the Defendants. They must then file an acknowledgment of service within 14 days of service of the particulars of claim.

Defence

Unless the Defendants admit the whole of the claim, they must file a defence, stating

which allegations in the particulars of claim they admit and which they deny. This must be within 28 days of service of the particulars of claim. If a defence is not filed, the Claimants can apply to the court for judgment in default of defence. Claimants may file a reply to the defence (but are not obliged to do so).

The Defendants may make a counterclaim with their defence, to recover losses they say that they suffered as a result of the Claimants' acts or omissions.

Statements of Truth

Each statement of case must be verified by a statement of truth. This confirms that the person making the statement believes that the facts stated in the document are true. Statements of truth must also be signed in each witness statement and certain other documents filed in the proceedings.

There are penalties for signing a statement of truth without an honest belief in the truth of the facts being verified.



Case Management

After a defence has been filed, the court will send the parties a notice of proposed allocation to a 'track'.

There are three tracks, depending largely on the value (and complexity) of the claim:

Small Claims track
(formerly the small claims court)
claims with a value up to £10,000

Fast Track
claims from £10,000 to £25,000

Intermediate/Multi-Track
claims above £25,000

The parties must complete and file at court a directions questionnaire, which provides information to assist the court in giving directions for how the case should be conducted. In the directions questionnaire, each party sets out proposals in relation to disclosure of documents, expert evidence that will be required, and witness evidence that will be relied on.

The court may hold a procedural hearing called a case management conference giving directions for the future conduct of the case until trial.

Settlement, ADR and Part 36 Offers

It is important to keep settlement in mind at all stages of the proceedings. The CPR and the courts encourage settlement of disputes in a number of ways; in particular, by the use of ADR (alternative dispute resolution) or Part 36 offers to settle the case (see below). Although the court cannot order the parties to enter into ADR, it may impose costs penalties on a party who unreasonably refuses to participate in a form of ADR. If there are any prospects of settling, it is usually better to do so sooner rather than later, to avoid further legal costs.

A Part 36 offer is an offer by Claimants or Defendants to settle the claim that complies with the requirements in Part 36 of the CPR. The rules provide for specific costs consequences where there has been a Part 36 offer that was not accepted, and the party to which the offer was made then fails to achieve a better result at trial. Part 36 offers can be an important tactical step in litigation, as they put pressure on the other side to settle the case.

Evidence

To succeed in litigation, the Claimants must prove their case on a balance of probabilities. They must provide evidence to support each of the essential ingredients of their claim. The Defendants will also need to provide evidence to support the defence.

The evidence is usually comprised of documents, witness statements and expert witness evidence (if required). Witnesses and experts may be called to trial to be cross-examined on their statements.

Expert evidence is used where the case involves matters on which the court does not have the requisite technical knowledge. For instance, in a professional negligence case alleging that a Defendant surveyor under-valued a property in a pre-purchase report to Claimants, the court is likely to require evidence from expert witness valuers about the value of the property. Expert evidence is usually given in the form of a written report by the expert.

Use Of Counsel

Most cases do not get as far as a trial – they settle before that stage. However if a case does get to trial, the parties will need to instruct counsel (a barrister) to represent them.





Trial and Judgment

The court may order that a pre-trial review (PTR) hearing is held to check that the parties have complied with all previous court orders and directions. The courts are reluctant to postpone a trial date or period that has been fixed without a good reason.

The length of the trial will depend on the complexity of the legal and factual issues to be resolved and the number of witnesses permitted to give evidence. The judgment may be given immediately after the trial but is often “reserved” to a later date, particularly in complex matters.

Costs

The general rule regarding legal costs in litigation (such as solicitors’ fees, court fees, barrister’s fees) is that the loser pays.

So if the Claimants’ claim succeeds they will be entitled to recover their costs from the Defendants. If the claim fails (and so the defence succeeds), the Defendants will generally recover their costs from the Claimants.

However, the court has discretion to make a different costs order. The court will take into account factors such as the conduct of the parties and any offers to settle the case.

It is very unusual for a party to be able to recover all of the costs incurred in the litigation.

The actual amount of costs to be paid is subject to an assessment process, unless the parties can agree the amount that will be paid. The standard basis of assessment is to allow costs to be recovered that were reasonably incurred, reasonable in amount and proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if reasonably or necessarily incurred.

How We Can Help

This Guide is for reference purposes only, and does not provide advice for any particular set of circumstances.

For further information, and to discuss your situation with no obligation, please contact us:

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