

WHAT TO EXPECT WHEN YOU ARE LITIGATING



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This note sets out a general overview of the litigation process in England and Wales under the Civil Procedure Rules (CPR), including steps to be taken before a claim is commenced. It does not cover every possible stage of the process, but highlights those which are likely to apply to your case.

The CPR states that the courts actively manage cases by furthering the “overriding objective” of dealing with cases justly and at proportionate cost. **This includes having consideration to the following:**

- The amount of money involved.
- The importance of the case.
- The complexity of the issues.
- The financial position of each party.

These factors must be borne in mind at each step of the litigation process. It is very important to carry out the steps required, in the manner stipulated by the CPR or a court order, and within the relevant time limit. The court may impose costs penalties or other sanctions on a party that does not comply with the court rules or orders

Prior to court proceedings

As part of the overriding objective parties to potential litigation are required to follow the relevant Pre-Action Protocol. These Protocols are set down by the court and govern the conduct of the parties before court proceedings are issued. The main aim of such Protocols is so that court proceedings are seen as a last resort and this is achieved by encouraging the parties to exchange information in order to resolve their disputes without the need for court proceedings.

Compliance with the Protocol will usually involve sending a detailed letter to the opposing party and allowing them sufficient time to respond. The parties can then take stock of their respective positions and try to settle their disputes.

Commencing court proceedings

If the dispute cannot be resolved using the Protocol procedure a party can then commence court proceedings. In order to do so the party who has suffered the wrong (the Claimant) will need to prepare its Particulars of Claim. This document sets out the detail of the case the Claimant wishes to make. This is sent to the court with a Claim Form and the appropriate fee and the court then issues the claim.

The claim is then sent to the opposing party (the Defendant) and that party will then have 14 or 28 days to provide their response (this is known as the Defence). The Claimant will then have the opportunity to prepare a further document in response (known as the Reply) and, if the Defendant has made a Counterclaim, they will need to prepare a Defence to that Counterclaim.

How the court deals with cases once they are issued

The Court firstly provisionally allocates the case to one of three tracks. This is primarily done on the basis of the amount claimed but there are other considerations such as the complexity of the issues involved or the amount of evidence required. The track to which the claim is allocated will dictate whether a party will normally be able to recover costs from their opponent if they are successful and the level of Judge who will hear the case.

The parties are then required to complete and return a Directions Questionnaire which gives the court further information about the claim such as how many witnesses each party will rely on and whether or not expert evidence is required.

In some cases (usually if the amount involved is over £25,000) the parties are also required to provide a disclosure report. This report details the extent to which that party considers disclosure should take place and the time and resources which should be dedicated to this stage of the process.

Parties are also sometimes required to file a Costs Budget. This is an estimate of each party’s costs for the entire case but broken down into each stage. This will allow the court to consider, as part of the overriding objective, whether the particular stage of the case is proportionate when compared with the potential costs which will be incurred.



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Once the court has received the completed Directions Questionnaires from each party it will confirm which track the case is allocated to and will either issue Directions for the conduct of the case through the court system or require the parties to attend a Case Management Conference.

The Directions or the Case Management Conference will specify the steps required for the future conduct of the case until Trial. The steps will depend on the issues raised in the case but the common directions are:

1. Disclosure and inspection of documents – these are the documents which are available and which support or undermine any party's case;
2. Witness statements – given by those with knowledge of the issues in dispute;
3. Expert evidence – this is used where a degree of technical or academic knowledge is required to resolve an issue in dispute, for example where the case involves an element of foreign law;
4. To fix a Trial date or period;
5. A further Case Management Conference (if required).

In some cases the court will also consider the parties' Cost Budgets for each stage of the claim. The court may, at any time, make a costs management order (CMO), in which it will record the extent to which the Budgets are agreed between the parties, or record the court's approval of a budget.

Preparing for Trial

The court will usually require the parties to complete a Listing Questionnaire a few months before the Trial (in some cases a Pre-Trial Review Hearing is held). This Questionnaire (or PTR) allows the parties to confirm that they have done everything required for the Trial and if this is not possible then to confirm the outstanding matters. The Questionnaire also confirms further information about the Trial such as how many witnesses each party will rely on and the estimated length of the Trial.

The Claimant is also required to prepare a Trial Bundle for use at the Trial. The Trial Bundle contains all of the documents relevant to the case as well as all Court Orders and the parties' Witness Statements.

Each party is also required to provide a written skeleton argument to the court and the other party (or parties) a few days before the Trial. The skeleton argument is usually prepared by the barrister (also referred to as "Counsel") instructed to represent you at the Trial. The Barrister will need to be instructed a few weeks before the Trial to allow him or her time to prepare.

Costs

The court has a wide discretion over the costs orders that it makes and it considers a number of factors when making any costs orders, including any offers to settle made by the parties and the conduct of each party. In most cases, however, the successful party will obtain an order that the unsuccessful party pay their costs.

The actual amount of costs to be paid by the unsuccessful party will depend on what can be agreed with them or if no agreement can be reached what the court assesses as reasonably incurred, or reasonable and proportionate in amount to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will also consider the parties' Costs Budgets when assessing costs and if a party's costs exceed the amount specified in a CMO (or, if there is no CMO, and the costs exceed the Budget by more than 20%), the excess may not be recoverable from the unsuccessful party. A successful party will not recover all of the costs which they have incurred.

THIS LEAFLET HAS BEEN PRODUCED TO PROVIDE GENERAL GUIDANCE ONLY. IF YOU REQUIRE SPECIFIC ADVICE THAT WILL BE TAILORED TO YOUR CASE, PLEASE SPEAK TO A [MEMBER OF THE TEAM](#).