

Guide to litigation

About this guide

This is one of a series of guides to the main steps of the litigation process. It seeks to answer some of the questions most commonly asked by parties involved in or contemplating litigation. It is intended to provide a general overview of the steps that may be taken in a 'typical' civil case and focuses on disputes between parties in respect of civil matters (commonly referred to as 'civil litigation'), as opposed to criminal matters.

What is litigation?

Litigation is probably the most widely recognised dispute resolution procedure. Broadly, litigation means the taking of legal action in a Court to determine or enforce a party's rights. There are several High Court trial centres and over 100 County Courts which can determine a wide range of disputes. Certain disputes may only be determined by specialised courts. For example, some employment related disputes may only be determined by an Employment Tribunal. The references in this guide to Courts are to Courts in England and Wales only. More information about the court systems in Scotland and Northern Ireland is available at www.scotcourts.gov.uk and www.courtsni.gov.uk respectively.

PRE-ACTION STEPS

When should I commence legal proceedings?

The answer is that it depends on the circumstances. Most claims must be commenced (ie. issued at Court) within a certain period of time (known as a 'limitation period') or they will become 'time barred' and the claim is likely to fail. For example, most contractual claims will need to be commenced within 6 years from the date of the breach of contract, whereas most personal injury claims need to be commenced within 3 years of the date of injury.

Should I always contact the other party before commencing proceedings?

In most cases the answer will be 'yes'. Depending on the circumstances, the type of claim, and subject to any limitation period, the rules governing civil litigation emphasise that a party is usually entitled to receive full details of any claim which is to be made against him, and given an opportunity to respond in advance of legal proceedings being commenced.

There will, however, be cases where it is not appropriate or there is not enough time to contact the other party before commencing proceedings.

ISSUING PROCEEDINGS

What if the other party does not reply or does reply but the dispute is still not resolved?

Legal proceedings may be formally commenced by issuing a Claim Form at the High Court or County Court, which must be served on the Defendant. Where you may issue can depend on the nature and value of the claim. You will need to set out your case clearly and logically, and may need a lawyer to assist in preparing the claim. Court fees for issuing

proceedings are usually based on a sliding scale depending on the value of the claim. For example, in the High Court commencing proceedings to recover a sum between £15,000.01 and £50,000 will cost £610. Further Court fees will be payable during the course of the proceedings.

What happens once proceedings have been issued?

Once a Claim Form has been served, the Defendant has to submit a Defence. The general rule is that the period for filing a Defence is 14 days after service of the Particulars of Claim or, if the Defendant files an Acknowledgment of Service, 28 days after service of the Particulars of Claim. The parties can agree to an extension of time for submitting a Defence, or the Defendant may apply to the Court for an extension of time.

Once the parties have exchanged formal documents setting out their respective cases (usually a Claim Form and Particulars of Claim for the Claimant and Defence/Counterclaim for the Defendant), the Court will usually send the parties a 'Notice of Proposed Allocation' setting out which 'track' the claim is allocated to, which also sets out a deadline for the parties to complete a Directions Questionnaire. The Directions Questionnaire deals with the next steps to be taken and the timetable for doing so, and the parties are encouraged to agree the directions before asking the court to approve them. Failing that, and in any case in larger claims, the court may list a hearing to consider these next steps.

What are the three tracks a claim may be allocated to?

Claims that are worth not more than £10,000 are generally allocated to the Small Claims Track. The main features of the Small Claims Track are that hearings will not normally last more than one day, they are informal, the strict rules of evidence do not apply and, whether a party wins or loses the case, it generally cannot recover its legal costs from the other side (save for the Court fee and occasionally certain fixed costs). However, costs may be awarded against a party who has acted unreasonably.

The other tracks are the Fast Track (generally for claims worth between £10,000–£25,000 and cases where the trial is not likely to last longer than one day) and the Multi Track for any claim for which the Small Claims Track or the Fast Track is not the normal track. In both the Fast Track and Multi Track, the winner's legal costs will generally be recoverable from the loser, though the costs recoverable in Fast Track cases can be restricted.

What is disclosure?

After the claim has been allocated to one of the three tracks the next step, in most cases other than Small Claims Track cases, will usually be disclosure. Essentially, disclosure is a process whereby the parties disclose the existence of all documents they have or have had in their possession and control which are relevant to the issues in dispute, whether they help or harm their case. This is usually done by exchanging lists of documents. Once lists have been exchanged, the parties will ask for copies of or inspection of

the documents they wish to see. Proceedings for contempt of Court may be brought against a person if he makes, or causes to be made, a false disclosure statement without an honest belief in its truth. Please see our guides to *Disclosure* and to *Statements of Truth* for more details.

When do witnesses give evidence?

Once the disclosure stage has been completed, exchange of witness statements will usually follow. A witness statement will usually give a full and detailed account of a person's knowledge of the issues in question. In a number of situations which may arise during the proceedings, witnesses may also need to give evidence by way of a further written statement (for example, in support of an application to force a party to comply with its disclosure obligations). A witness may also need to give oral evidence at trial when he may be cross examined by his opponent or his opponent's legal representatives.

Will expert evidence be necessary?

It depends on the issues in dispute. In some cases the Court will need to be guided by expert evidence (for example, by medical experts, accountants, surveyors, architects and so on). Experts can either be appointed jointly or the parties may each appoint their own expert in a particular field (usually with the Court's permission). The experts may meet to try to narrow the issues and reach some common ground so that the Court only has to determine the unresolved areas of difference.

What if I require the Court's urgent assistance?

In some cases, it may be necessary to restrain certain activities of the other party by obtaining an interim injunction from the Court until judgment has been given. An injunction is an order requiring or prohibiting a party from taking specified action. These may be given in a variety of circumstances, including an order to freeze the bank account of the other party where there is serious concern that their funds may be dissipated, and/or to search and seize documents and information which may have been illegally obtained and to prevent an ongoing breach of contract or other infringement of a party's rights.

Interim injunctions can be obtained both prior to and following the issue of proceedings. An application can be made to the Court without giving notice to the other side. The party making the application must submit a sworn affidavit setting out the facts relied upon and produce compelling evidence in support. The Court will need to be persuaded that there is good reason to restrict the other party's rights. The costs of making an application can be significant, and the cost of obtaining freezing and/or search and seizure orders can be even greater. The Court will usually make an order which provides that the costs of either bringing or defending the application will be awarded to the successful party when the dispute is determined at a full trial.

When will a trial take place?

This depends on a wide range of factors. Typically, the Court will aim to hear a Fast Track claim in under a year from the date of issue of the Claim Form. Many cases can be disposed of sooner but they can also take much longer to come to trial. Once the trial has taken place, judgment will be pronounced either immediately, or within a few weeks of trial.

Do we have to have a trial?

Some cases are determined by the Court without the need for a full trial and many others are settled upon the parties agreeing terms. It is also open to a claiming party to bring the proceedings to an end by serving a notice of discontinuance, in which case it would normally be liable for all of its opponent's legal costs. A party issuing proceedings should therefore generally be prepared to see the matter through to a trial.

Recovery of legal costs

The normal rule is that the losing party has to pay the winner's legal costs. This usually means that a winning party can expect the court to order the losing party to pay a large proportion of the costs which the winner has paid to his legal representatives. However, there are circumstances where more or less is recoverable and others where no costs would be recoverable. Costs are ultimately at the discretion of the Court, which will actively encourage alternative dispute resolution techniques. The Court may penalise the winning party by refusing to order the loser to pay its costs, or even by ordering the winner to pay the loser's costs, if they have unreasonably refused to participate in alternative dispute resolution procedures such as mediation. The conduct of the parties both prior to and during the proceedings may also affect the level of damages recoverable. Our *Guide to Legal Costs* contains a more detailed explanation of the rules on costs.

What can I do if my opponent fails to comply with a Court order?

If a party does not comply with a Court order then steps may need to be taken to enforce it. A number of options may be available depending on the terms of the order.

Please see our *Guide to Enforcement* for further details.

Appeals

If a party wishes to appeal a decision or judgment and did not ask for permission to do so at the original hearing (or their request was refused), then they will need to obtain permission from the Court to appeal. Regardless of whether permission has already been granted, a form called an Appellant's Notice must be filed at Court.

Where permission has not already been granted, or where permission has been granted but a time limit has not been set, the Appellant's Notice must be filed within 21 days of the date of the decision being appealed. The Court in which you must issue your appeal will depend on the level of the judge who made the original decision, and the nature of the order you wish to appeal. Depending on the circumstances, an appeal may be heard in a County Court, the High Court, the Court of Appeal, or the Supreme Court.

A party will have to pay a fee when he appeals, and if he loses the appeal he may be ordered to pay the other party's costs. Permission to appeal will only be given if the Court considers that the appeal would have a real prospect of success or there is some other compelling reason why the appeal should be heard.

About us

Our experienced dispute resolution lawyers represent Claimants or Defendants in a wide range of litigious matters in both the High Court and County Court and can advise you on every aspect of your case.

If you have any questions about this guide or any other matters please do not hesitate to contact a member of our Dispute Resolution Group at disputeresolution@bwblp.com or

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