

An Overview Of Civil Proceedings In England

Introduction

There is no civil code in England; English civil law comprises essentially legislation by Parliament and decisions by the courts. English courts interpret legislation and are usually required to follow decisions on the same issue by a court of equivalent or higher status.

Legislation and decisions of the courts are subject to legislation adopted by the European Council and decisions of the Court of Justice.

The Court System

The English civil court system is divided between the High Court and the county courts; this note addresses the procedure in the High Court which deals largely with claims in excess of £50,000.

The High Court has jurisdiction over most matters through its District Registries (found nationally) and the Royal Courts of Justice in London. It is divided into three divisions – Chancery, Queen's Bench and Family (not dealt with in this note).

The Chancery Division deals with companies generally and such specialist matters as wills, trusts, insolvency and tax. The Queen's Bench Division (QBD) deals with all other civil matters eg. contractual disputes, personal injury cases, industrial accidents, defamation cases and negligence claims. Both the Chancery Division and the QBD have specialist courts dealing in specific areas, for example:-

- in the Chancery Division, the Patents Court deals with intellectual property disputes and the Companies Court deals with company disputes including insolvency issues;
- in the QBD, the Commercial Court deals with commercial disputes such as shipping, insurance, commodities, banking and other specialised financial issues and the Technology and Construction Court deals largely with information technology and engineering and construction disputes. Through its Administrative Court, the QBD deals with applications to challenge decisions by governmental bodies.

The Court of Appeal will deal with any appeal from a decision of a judge. On issues of public importance, there is a further and final stage of appeal to the Supreme Court, where the appeal is heard usually by five Lord Justices. Occasionally matters may be referred to Europe (the Court of Justice) for a decision.

Lawyers

The legal profession is split between barristers (who are often referred to as "counsel") and solicitors. Barristers are specialist advocates who have the right to appear in the higher courts on most substantive hearings. They also draft documents for court and give opinions on particular areas of the law in which they are expert. Barristers do not generally deal with clients direct. Senior barristers may be appointed as Queen's Counsel. All other barristers are known as juniors. Barristers are self-employed. Solicitors have day to day contact with clients and have the main responsibility for handling a case. Solicitors may also appear as advocates in the higher courts provided they are qualified to do so. Most commercial solicitors practice in partnership with other solicitors.

Although both barristers and solicitors are eligible for appointment as High Court judges, the majority of judges are barristers.

Civil Procedure Rules

The 1998 Civil Procedure Rules ("the CPR") govern the procedure that is followed within the English civil court system. The CPR requires that all cases are dealt with in accordance with the overriding objective of enabling the court to deal with cases justly and this includes so far as is practicable ensuring that the parties are on an equal footing; dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party; and ensuring that it is dealt with expeditiously and fairly.

The Path of a Claim

The flow chart at the end of this note sets out the path of a typical claim dealt with by the High Court. A typical claim will take approximately 12 – 18 (from the date of issue of the claim form) to get to trial.

Key steps in the path of a claim are:-

- Pre-action matters

Before proceedings are issued, parties are required to act reasonably in exchanging information and documents in an attempt to settle their dispute without recourse to litigation. Sanctions may be imposed against parties who fail to comply with these requirements. In addition there are a number of "pre-action protocols", setting out the procedure which parties are expected to follow in certain categories of dispute, for example, construction and professional negligence disputes.

- Issuing proceedings and court documents

Proceedings are commenced when the claimant "issues" a claim form that must contain or be accompanied by the particulars of claim. The claim form and particulars of claim are critical documents and they must set out properly a summary of the basic facts (but not the evidence) of the claim against the defendant; a failure to do this may allow the defendant to strike out the claim against him. A claimant will have to pay a fee to issue the claim form, the amount of which depends upon the value and nature of the claim.

The claim form and particulars of claim have to be served upon the defendant in accordance with special rules and within prescribed time frames.

When a defendant is served with court proceedings, he has to indicate whether he accepts the claim or intends to defend the claim. Again this must be done within prescribed time limits and the court must be notified of the defendant's position. If the defendant wishes to defend the claim, he must serve a defence (including any counterclaim) normally within 28 days of receiving the claim form. The defence is also a critical document because if the defence is regarded as weak, the claimant can seek to strike out the defence. A failure to serve a defence will allow the claimant to enter judgment in default against the defendant.

Further court documents may be served and filed at court in order to clarify each party's position. All court documents will be accompanied by a statement of truth verifying the truth of the information contained in the document. Our advice note "Statements of Truth" provides more information on this topic.

Court documents, including the claim form, particulars of claim, defence and any counterclaim will, in certain circumstances, be accessible to non-parties.

- Case management

All cases are actively managed by the courts to ensure that they are cases are proceeded with properly and timeously, by helping the parties to identify the issues at an early stage and fix timetables for the disclosure and exchange of evidence and the trial date itself. The courts will also consider whether the likely benefits of taking a particular step will justify the cost.

Another part of case management by the courts is to try and encourage the parties to settle their disputes without the need for trial with reference to alternative dispute resolution procedures (ADR) such as mediation. Our advice note "ADR & Mediation" provides more information on this topic.

- Disclosure of documents

A party is required to disclose to the other party the documents he seeks to rely upon and also the documents which adversely affect his own case, adversely affect another party's case or support another party's case. This

may include confidential documents if they are relevant to the dispute. Certain documents that are otherwise disclosable may properly be withheld from the other party on the ground of "legal professional privilege". Our advice note "Privilege – Some Practical Considerations" provides more information on this topic.

Documents will include anything in which information of any description is recorded, including information held in an electronic format.

Disclosure is a vital stage of the proceedings as the weakness of a party's position becomes apparent from the documents. Proceedings can settle as a result of disclosure. Our advice note "Disclosure and Privilege" provides more information on this topic.

- Witness statements

If a party is to adduce oral evidence at trial then each party should disclose the evidence in a written format. Again this can be a vital stage in the proceedings as a party's position will become more apparent from the evidence contained within the witness statements and settlement could result. A witness statement should set out the facts to which the witness will testify orally at the trial. It must be certified to be true by the witness. Witness statements are exchanged several weeks prior to trial. At the trial the witness may with the court's permission amplify his witness statement, and give evidence in relation to new matters which have arisen. All witnesses may be cross-examined by the other party's lawyer. Our advice note "Witness Statements" provides more information on this topic.

- Experts evidence

If a party needs to rely on the opinion evidence of an expert on a particular issue, the court's permission will be required. An expert witness will be independent and has an overriding duty to the court and not to the party instructing him. There can be more than one expert witness per case if there are several areas of expertise to address. Likewise a court can order for the parties to share the services of an expert on a particular issue. An expert witness may be involved in court proceedings and may be called to give evidence. There are strict rules about the content and format of an expert witness' report and the evidence he may give. Our advice note "Expert Evidence" provides more information on this topic.

- Trial

With the exception of civil fraud and defamation cases there is no right to trial by jury – the trial will be determined by the judge alone.

English trials are predominantly oral, requiring each party to make oral submissions and rely upon the evidence of witnesses called to trial. However before the start of the trial, the judge will generally have read the court documents, witness statements, experts' reports and

skeleton arguments drafted by counsel. The judge does not make his own investigations as such but may require a party to clarify his position. In summary the trial comprises of each party's advocate stating their position and calling upon the evidence of witnesses and experts that they seek to rely upon; these witnesses may be cross-examined by the opposing advocate. The trial will end with both parties' advocates summing up the evidence and making submissions on the relevant law.

Judgment may be given immediately after the trial or in more complicated cases it will be reserved until a later date when the judge has reflected on the issues.

If a party seeks to appeal the judgment, the appealing party must obtain the permission of the court; permission will only be given in limited circumstances.

Costs

Although it is at the discretion of the court, the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party but any breach of the CPR or the overriding objective may result in a penalty. Generally, in the absence of unreasonable conduct, the winner might expect to recover a contribution of approximately 60 - 65% of its legal costs.

It is now possible for claimants and defendants to agree conditional fee agreements (CFA) with their lawyers. CFAs allow a lawyer to charge a success fee on top of his normal fees if the case is successful and either a reduced fee or no fees if the case is unsuccessful. The success fee may be payable by the other party. Our advice note "Funding Options" provides more information on this topic.

Enforcement Of Judgment

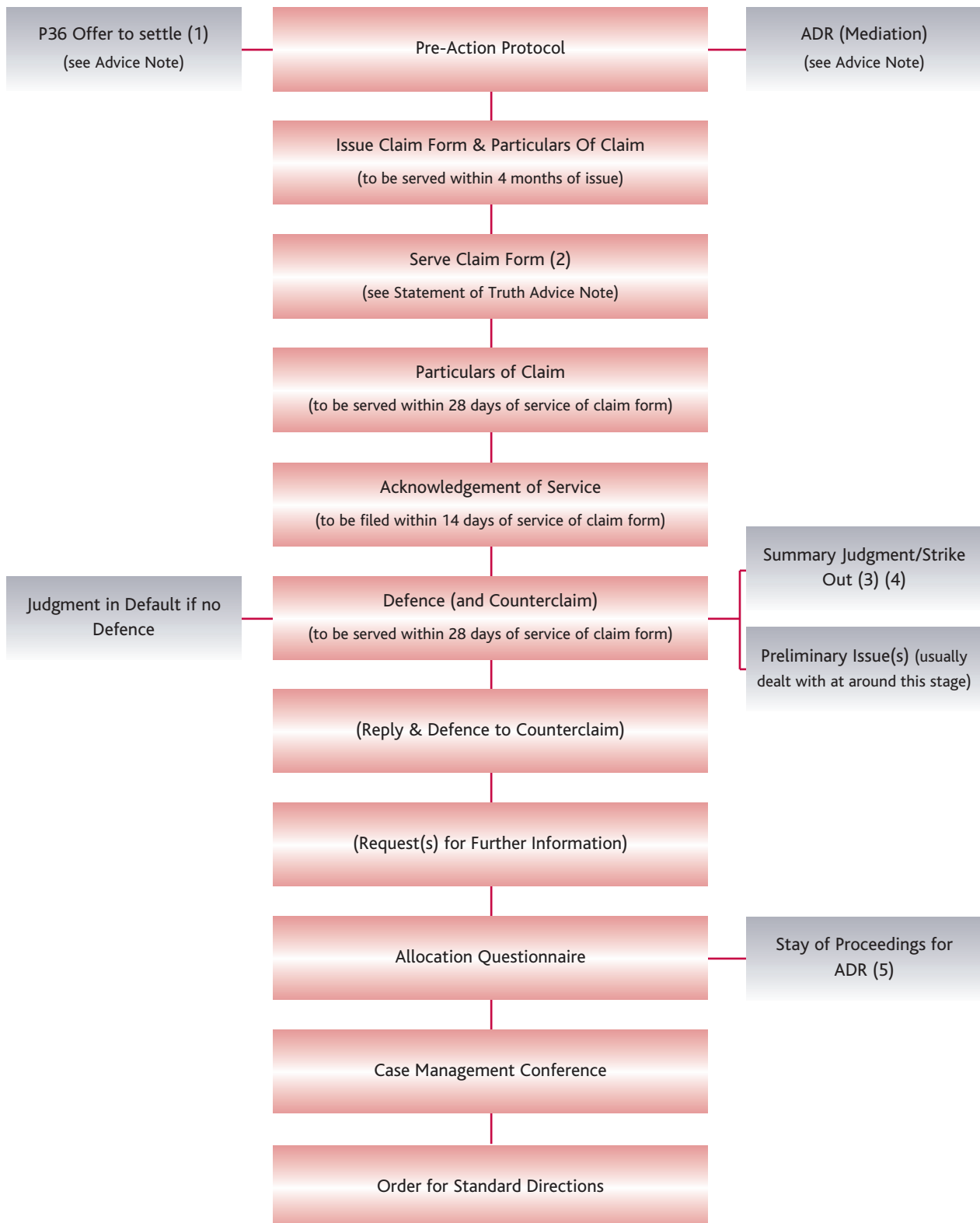
When judgment is obtained, the defendant will usually make payment voluntarily. If he does not, various enforcement procedures are available to the claimant, for example, arranging for the defendant's assets to be seized and sold and obtaining a charging order over property owned by the defendant. There is also the option of forcing the defendant into insolvency if the judgment sum is not met.

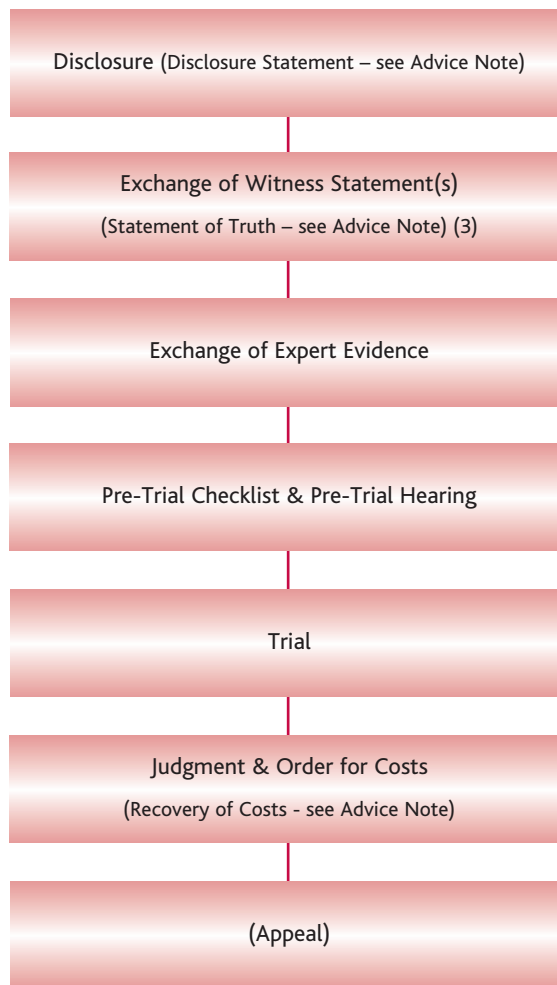
Strategic Issues

There are a number of strategic measures that may help the resolution of a case including:

- Offers to settle – whilst offers to settle a dispute can be made at any time in a dispute, the CPR provides the party making the offer to settle specific cost advantages (provided that the offers to settle meet prescribed requirements); these provisions apply to offers made by both claimants and defendants. Our advice note "Part 36 Offers to Settle" provides more information on this topic.
- Offer to settle a dispute using ADR - a party who unreasonably refuses an offer to settle a case by reference to ADR may incur adverse cost penalties. Our advice note "ADR & Mediation" provides more information on this topic.
- Injunctions - in some cases it may be necessary to restrain conduct immediately or to preserve assets until after trial. In those cases, the court may grant an injunction. The sole purpose of the court order will be to preserve the parties' positions until their rights have been determined. The applicant does not have to prove its underlying claim at the injunction hearing but must show that it has a good arguable claim. The applicant for the injunction must provide an undertaking to compensate the defendant for any loss caused by the injunction being wrongly granted. In addition an order can be obtained which allow one party to search for and seize documents and assets. Often a case will settle soon after an injunction has been awarded. Our advice notes "Freezing Injunctions & Restraining Injunctions" and "Search Orders" provide more information on this topic.
- Security for costs – the usual costs rule in litigation is that the losing party will pay a substantial proportion of the winning party's legal costs. However for those defendants who are confident of successfully defending a claim, but fear that the claimant will not and/or cannot pay any costs awarded against it, there is a risk that not all (if any) of their costs will be paid by the claimant. To safeguard against this risk, in certain circumstances, a defendant can apply to the court early in the proceedings for an order that the claimant provide security for any costs that he may become liable to pay. Security for costs can also be sought by a claimant against a defendant in respect of any counterclaim, and by a respondent to any appeal and by an appellant to any cross-appeal. Our advice note "Security for Costs" provides more information on this topic.

Path of a claim





Notes

1. Part 36 Offers to settle can be made at any time in the dispute including before issue of proceedings. There are certain cost advantages (in particular if a claimant makes a P36 offer).
2. All statements of case and witness statements must be signed off with a statement of truth.
3. A number of interim hearings may be held along the way e.g. an application for security for costs against the claimant; summary judgment or strike out against either party.
4. Summary assessment of costs at interim hearings of less than one day. Paying party has 14 days to pay.
5. A stay of proceedings may be made at any time during proceedings.

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