

A General Guide to Litigation

Below are set out the steps to be taken when bringing a claim in the courts. This is a general summary and is for guidance only.

Claims above £15,000 in value will usually be allocated to the multi track (in contrast to the fast track in the County Court which is for smaller claims), and a timetable for the various steps will be agreed by the parties and/or as dictated by the court under its case management powers.

An issue to consider is in which Division of the High Court a claim should be brought. The options are the Queen's Bench Division, the Technology and Construction Court, the Commercial Court. and the Chancery Division. Each has its own advantages and disadvantages.

Step in Proceedings	Details
File a claim form and particulars of claim. A fee is payable.	These documents will set out the claim, the facts on which you rely and specify the remedy which you seek.
The defendant will file a defence and any counterclaim. Often, whatever the merits of any counterclaim, the defendant will put forward a counterclaim to put pressure on the claimant to settle.	Provided the defendant files an acknowledgment of service, the defendant has 28 days from service of the claim to file a defence. It is likely that they will request an extension for filing a defence and may also apply to the court for a subsequent extension of time in which to file a defence and any counterclaim
The claimant serves a reply to defence and defence to any counterclaim.	<p>The claimant must file its reply when it files its allocation questionnaire. The allocation questionnaire is served by the court and normally states the day by which it is to be returned.</p> <p>Unless the court orders otherwise, the period for filing a defence to a counterclaim is normally 14 days after receipt of the counterclaim. However, if the date is earlier than the date for filing the reply the court will normally order that the defence to counterclaim is filed by the same date as the reply.</p> <p>The claimant can make an application to the court for an extension of time for the filing of the reply and a defence to a counterclaim.</p>
Request by either party for further information under CPR Part 18.	A request for information will often accompany the filing of a defence or reply to defence. However, requests may be served at a later date. The request will seek to identify further information or clarify the other side's position.
Return of allocation questionnaire.	The allocation questionnaire is served by the court after the defence to the claim is filed and normally states the day by which it is to be returned. The date of return is at least 14 days after the date of deemed service on the party in question.
First case management conference.	Time for compliance with this step is set by the court. The court will usually set this date after the allocation questionnaires have been returned by both parties and it has formally allocated the claim to the multi track. The court may order a second or subsequent case management conference.
<p>Disclosure of documents.</p> <p>Each party is obliged to disclose in a list the documents it relies on and which are relevant to the claim. Each party has to list documents which are or have been in their control and give particulars of where they have searched for documents. Documents include paper and electronically stored documents. This includes documents which are both helpful and unhelpful to a party's case.</p>	<p>Parties generally agree to a time period for this step and/or a time period is ordered by the court at the first case management conference.</p> <p>The disclosure process could be extended if it is necessary for the parties to make applications to the court for specific disclosure on the basis that there are grounds to believe that not all the documents that exist have been disclosed.</p>

Inspection of documents.	<p>Each party inspects the other's documents and requests copies of relevant documents.</p> <p>Inspection can normally commence within 7 days of exchange of lists.</p>
Expert evidence, instructing an expert and assisting in the preparation of the evidence.	Parties generally agree to a time period for this step and/or a time period is ordered by the court at the first case management conference. Preparation of evidence follows disclosure of documents.
Drafting witness statements of fact.	<p>Parties generally agree to a time period for this step and/or a time period is ordered by the court at the first case management conference.</p> <p>The timetable estimate depends on the number of witnesses and extent of evidence required to prove claim and possibly defend a counterclaim. These statements are important and must be true. They will cross reference important documents. They will form the basis of evidence at trial.</p>
Other party's witness statements and drafting any supplementary witness statements of fact.	Parties generally agree to a time period for this step and/or a time period is ordered by the court at the first case management conference.
Other interlocutory and pre-trial issues which arise during the course of the preparation for trial.	There are a variety of procedural or tactical applications that can be made from time to time depending on circumstances.
Pre-trial review.	The court will consider whether to hold a pre-trial review on receipt of the listing questionnaires. A pre-trial review is likely to be held in any significant case. The purpose of the review is for the court to be satisfied that all parties are ready for trial and to prepare a timetable for trial.
Preparation for trial including preparation of bundles of documents.	Time periods will be set at pre-trial review conference with judge. Bundling of documents is a time consuming exercise for which accuracy is vital. These bundles are used by all parties, the judge and witnesses at trial and discrepancies have a significant impact on the smooth running of any trial.
Preparation of written "skeleton" arguments prior to hearing, to assist the judge.	Both parties are required to supply a written outline of their cases and arguments prior to trial.
Attendance at trial.	The length of the trial will depend on the legal and factual issues which require resolution. This will become clearer once the statements of case have been served and issues identified by the parties.
Judgment.	<p>In a complex case, it is unlikely that the judge will give an immediate judgment. He will "reserve" his judgment to a later date.</p> <p>Usually a draft of the judgment is provided confidentially to solicitors and counsel (but not clients) some days before being handed down. This enables them to prepare submissions on costs and prepare any applications for permission to appeal.</p>
Award and assessment of costs.	<p>Normally costs follow the event, that is, they are awarded to the "winning" party. However, costs are in the discretion of the court and the order may be mixed depending on the actual outcome of the trial. Part 36 offers may have an impact on costs orders.</p> <p>The calculation of costs payable is either by agreement or by assessment. In assessment an officer of the court considers which costs and expenses were reasonably incurred. Normally this would equate to about 70% of costs paid by the party.</p>
Settlement negotiations/ADR	At all stages of the proceeding, the parties can enter into settlement negotiations or agree to mediate. In general, the most appropriate times to consider a settlement are after the filing of the claim and defence or after the exchange of witness statements. Settlement is usually a sensible option for both parties in order to save the costs of continuing with litigation and to eliminate risk.