

Briefing Note: Guide to Litigation in the County Court

An Introduction to the Guide

This guide is an outline of the jurisdiction and basic procedures of the County Court. This guide should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

County courts can deal with a wide range of cases. These include actions relating to:

- Landlord and tenant disputes, for example claims concerning possession, rent arrears and repairs;
- Consumer disputes, for example faulty goods or services;
- Personal injury claims (injuries caused by negligence), for example traffic accidents, falling into holes in the pavement, accidents at work;
- Debt problems, for example a creditor seeking payment;
- Employment problems, for example claiming for wages or salary owing or pay in lieu of notice.

The procedure for making a claim in the County Court is governed by the Civil Procedure Rules (CPR). These rules were introduced to reduce the cost and increase the efficiency of the litigation system in England and Wales. The rules confer extensive powers on the Court to enable a case to be managed effectively, and for it to be dealt with in a just and timely fashion.

Since the introduction of the CPR parties to a claim are encouraged to use litigation only as a last resort. To this end they are expected to explore other methods of dispute resolution, and to share information to narrow the issues in contention prior to issuing proceedings. A party that does not do this may be penalised by the Court, even if their claim is successful.

Before Starting Proceedings

Before proceedings are issued the party bringing the claim, referred to as the Claimant, must set out the basis of its claim in a letter to the Defendant. This letter must contain enough information for the Defendant to commence investigations whether it is liable and the potential value of the claim. The Defendant should acknowledge receipt of the Claimant's letter of claim and respond by indicating whether or not liability is admitted. The parties are encouraged to enter into negotiations in an attempt to settle the dispute or to pursue some form of alternative dispute resolution (ADR), before issuing proceedings.

Issuing Proceedings

If matters cannot be resolved through negotiation or ADR, litigation may be the only recourse left to the Claimant. In order to commence proceedings in the County Court the Claimant must complete a Claim Form and lodge it with the Court office. The Court will then issue the claim by sealing the Claim Form. To activate the claim the Claim Form must then be served on the Defendant by one of the methods of service prescribed by the CPR. The Claimant must prepare a document containing the full details of its claim. This document is known as the Particulars of Claim (the Particulars). The Particulars must contain a concise statement of the facts that the Claimant wishes to rely on, details of whether the Claimant wishes to claim interest and the remedy it is seeking to resolve the claim, usually damages (which is the legal term for monetary compensation). The Particulars must be filed at Court and served on the Defendant within 14 days of serving the Claim Form. However, in practice, the Claim Form and Particulars are generally served simultaneously on the Defendant.

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Summary:

An outline of the jurisdiction and basic procedures of the County Court

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Within 14 days of receiving the Claim Form and Particulars the Defendant must file an acknowledgment of service with the Court stating whether it intends to defend the case brought against it. The Defendant then has a further 14 days to file and serve its Defence if it wishes to contest the claim. At this juncture the Defendant may also file a counterclaim against the Defendant.

Track Allocation

After the Defence has been filed the Court will allocate the case to a particular track within the County Court system.

Small Claims Track

A claim for £5,000 or less will usually be allocated to the small claims track. This track is designed to deal with straightforward cases without the need for substantial pre-hearing preparation and the formalities of a traditional trial. Cases allocated to the small claims track often concern consumer disputes and the Court does not necessarily expect either party to be legally represented. The rules about costs on the small claims track are unusual - see below.

Fast Track

Claims with a value between £5,000 and £25,000 are generally allocated to the fast track. Although the parties to these cases are usually legally represented the Court still takes an active role in guiding the proceedings, making full use of its case management powers to ensure that costs are kept to a minimum and that a strict timetable of directions is adhered to by the parties for disclosing information, preparing witness statements and, if necessary, commissioning a report, usually from a joint expert. Those who do not adhere to the timetable may be penalised by the Court.

Multi Track

Claims with a value exceeding £25,000 will ordinarily be allocated to the multi track. These cases can be extremely diverse in nature, ranging from the fairly straightforward to the hugely complex. The Court's use of its case management powers reflects the varying complexities of each case. A straightforward matter may be dealt with through a similar timetable of directions as the fast track. A more complicated case may need a number of pre-trial hearings or Case Management Conferences to narrow the issues and to ensure that all the information necessary is gathered prior to trial.

Trial

The length of the trial will depend on the complexity of the case and the volume of information to be considered. A small claims case is conducted informally at the Judge's discretion and may be concluded in an hour whereas fast track and multi track cases have formal hearings and the rules of evidence apply. In general, the aim in fast track cases is to resolve all the issues at a trial lasting no more than one day. Issues of liability, quantum, and costs should all be determined by the Judge at trial and a final order made accordingly. It is therefore essential in fast track cases that a Statement of Costs is submitted to Court prior to the trial to assist the Judge in making an order for costs.

At the conclusion of a multi track trial the Judge presiding will decide which party should pay costs but is unlikely to determine the exact amount payable. If the parties cannot agree on the amount of costs payable, a different Judge will hold a separate hearing at a later date via a process called detailed assessment where the party in whose favour costs were awarded will submit a detailed breakdown of its costs and its opponent will be given the opportunity to challenge its expenditure.

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Costs

The general rule in relation to costs is that the loser in litigation will be ordered to pay the winner's costs irrespective of who brought the claim. Therefore the loser will not only have to meet its own costs but also those of its opponent. There are, however, many exceptions to this general rule.

Also, the rule does not apply to cases heard on the small claims track. Here, the Court is not permitted to order a party to pay another party's costs, fees or expenses unless the circumstances fall within a particular category of exception detailed in the CPR. Such exceptions include fees for a limited amount of legal advice in relation to a claim for an injunction or an order for specific performance; reimbursement of court fees and the reasonable travel expenses incurred by witnesses; recovery of a capped sum in respect of experts' fees and an order for costs as a penalty to a party who has behaved unreasonably during the course of the proceedings.

In fast track cases the costs payable for legal representation are fixed and are dependent on the value of the claim. Therefore, it is unlikely that the winner would recover its full costs from its opponent. It should be noted that the winner remains liable for the remainder of its legal representatives' fees despite an order for costs having been made against the loser.

Similarly in multi track cases the winner will not recover all of its costs as the loser will invariably challenge the amount of the winner's costs in detailed assessment. In these circumstances the winner may expect to recover between 65% and 90% of its total costs and again it will remain liable for the balance of its legal representatives' fees.

It is important to note that costs can be affected by offers of settlement made during the course of proceedings.

If you would like to know more about this topic or our other legal services, please contact:

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