ENGLISH CIVIL LITIGATION PROCEDURE

In any legal dispute there will be situations where recourse to alternative forms of dispute resolution such as mediation are not appropriate for resolving the dispute and where the parties may prefer not to arbitrate their dispute. In these situations, it will be necessary and often preferable to commence legal proceedings in the English civil courts either in the High Court, or for smaller claims of £100,000 or less the County Court.

This Client Guide provides an overview of the English civil litigation procedure for claims in the High Court.

This Client Guide does not discuss the options available to fund claims, for information on this please see our Funding Client Guide at https://www.hfw.com/insights/Client-guide-funding-disputes-in-England-and-Wales.

The Courts

The English High Court comprises three distinct divisions, namely the Chancery (for company disputes, insolvency, tax), King's Bench (contractual disputes, personal injury, defamation), and Family. The King's Bench Division (**KBD**) also has specialist courts e.g. the Commercial Court for business disputes, the Admiralty Court for technical maritime disputes e.g. salvage and collision, and the Technology and Construction Court (**TCC**) for construction disputes. These courts usually have one judge hearing each matter and are collectively known as the Business and Property Courts.

Appellant courts include the Court of Appeal, for appeals from the High Court, where usually three judges hear each case. The final English appellant court, is the Supreme Court, in which cases are usually heard by five judges, but on occasion and for cases of significant public importance will be heard by a greater number of judges. English Commonwealth cases are referred to the Privy Council, similar to the Supreme Court. The English Supreme Court can no longer refer cases to the European Court of Justice (**CJEU**) on questions of EU law following the UK's exit from the EU the relationship.

Jurisdiction

At the outset of a case, your lawyer will advise you on which legal jurisdiction applies to your dispute. This is a complex area, and will vary on the circumstances of the disputes, whether it is a contractual or tortious (e.g. negligence etc) claim, whether there are any conventions that apply, and will also depend on whether the parties elected for disputes to be heard by a particular court in a particular jurisdiction e.g. by including a dispute resolution clause in the contract. Often there may be more than one possible jurisdictional option e.g., in tort claims, in which case your lawyer will advise which is the most beneficial looking at a range of factors, including ease of enforcement.

Limitation

In the event that the English courts have jurisdiction then parties should be mindful of the limitation date that applies to their case i.e. the date on which a cause of action expires, provided for by the Limitation Act 1980. Any action issued after the expiry of the limitation date, which for contract and tort claims is generally 6 years from the date on which a cause of action accrued, will be time barred.

Legal representation

England has a split profession, our lawyers are either solicitors or barristers. Generally speaking barristers undertake advocacy in court and solicitors manage the running of the case, devise the strategy, lead the negotiations, often draft documents, organise the collection of evidence – whether expert, witness or documentary, but may also appear in court instead of using a barrister.

Procedural Rules

Once questions of jurisdiction and limitation have been answered, parties should be mindful of the rules contained within the Civil Procedure Rules (**CPRs**), which sets out the procedure the case will follow.

The 'overriding objective'

It is a feature of English litigation that cases must be managed in such a way as to enable the courts to assess them fairly and at proportionate cost, this is known as the 'Overriding Objective' and underpins litigation in the English courts. The key factors which must be considered throughout the litigation include:

- compliance with the CPR and any court orders;
- dealing with a case in a way that is proportionate to the amount of money involved, the importance of the case, its complexity, the financial position of the parties; and
- ensuring the case is dealt with efficiently and fairly.

The key stages of civil litigation in the English courts

There are 6 key stages of court proceedings in the English courts, these are:

1. The pre-action stage.
2. Commencement of proceedings and statements of case/pleadings.
3. Preparation of evidence: disclosure, and witness and expert evidence.
4. Trial.
5. Appeal.
6. Enforcement.

In addition, settlement should be considered at each stage of the litigation.

The pre-action stage

The CPRs provide that before commencing litigation parties must enter into pre-action conduct in order to determine whether early resolution can be reached, and if not to allow a fair beginning to the case. This is a mandatory stage and the court will apply sanctions if it is not followed e.g. ordering the defaulting party to pay costs to the counterparty. It is therefore usual for the parties to comply with the pre-action requirement, whether as set out in a specific protocol e.g. the construction protocol, or a general protocol which applies where there is no specific protocol. Most protocols require the:

- claimant (the aggrieved party) to write to the defendant with details of the claim, including a summary of the facts.
- defendant to respond within a reasonable time – 14 days in a straightforward case and no more than 3 months in a very complex one.
- parties to provide to the other (disclose) key documents relevant to the case.

Parties should also be careful to preserve all relevant documents related to their case. These documents may be subject to disclosure at a later stage so we regularly advise parties to suspend any corporate document destruction programmes as soon as it becomes clear that litigation is a realistic possibility.

Commencement of proceedings and court documents (statements of case)

In the event that the dispute is not settled during the pre-action stage, the claimant will initiate proceedings by paying a fee (commonly £10,000 for cases in which we act) and issuing a claim form. The claim form will usually contain the particulars of claim outlining the main allegations and points of issue in the case. Once a claim form is issued, it must be served on the defendant within 4 months, or 6 months if the claim form is to be served out of jurisdiction.

The CPRs state that when particulars of claim are served on a defendant, the defendant may do one of the following:

- file or serve an admission.
- file a defence (or do both, if admitting only part of the claim).
- file an acknowledgement of service (indicating whether a challenge to the court's jurisdiction is to be made).

In the event that the defendant does not do one of the above, then the court will give judgment in favour of the claimant, known as 'default judgment'.

It is possible to obtain early judgment even where the defendant files a defence. Summary judgment can be obtained if it is possible to show that the defence is weak. Similarly, it is possible for the defendant to obtain a strike out (dismissal) of the claim at this stage, if it can be shown that the claim is weak.

In the absence of early determination, the parties will continue to file further documents clarifying their case and attempting to narrow and weaken that of their counterparty.

All of these documents require their maker to validate the truth of the document by signing a 'statement of truth'. There are serious penalties if it is later found that false statements were given.

It should be remembered that English litigation documents are not generally private and therefore once filed at the court they may be obtained on request to the court by third or non-parties.

Evidence

Once proceedings have begun, parties will be expected to exchange documents relevant to their case, which are not covered by legal professional privilege (for further information on privilege please see our Privilege Client Guide at https://www.hfw.com/insights/Client-Guide-Privilege). For this purpose 'documents' include electronic documents such as emails, SMS messages as well as chat and social media communications (e.g. WhatsApp, Instagram, Facebook etc messages), and audio messages. Parties are required to exchange (disclose) the following documents:

- the documents on which they rely.
- the documents which either:
  - adversely affect their own case.
  - adversely affect another party's case.
  - support another party's case.
- the documents which they are required to disclose by a reference to the CPRs.

A document will usually be subject to disclosure when it contains information relevant to the case. In order to comply with their CPR disclosure obligations, parties must provide a list of documents in the relevant practice form alongside a disclosure statement outlining the extent of their search to locate relevant documents.

Due to the large volumes of documents involved, parties need to use electronic disclosure platforms to search the data for relevant documents. It is also now increasingly common for artificial intelligence tools to be used to further speed up the process, and reduce the cost.

Disclosure in the Business and Property Courts is governed by the Practice Direction on Disclosure in The Business and Property Courts (**PD 57AD**). PD 57AD came into effect on 1 October 2022, following a consultative Disclosure Pilot Scheme (**PD 51U**). The changes bought in by PD 57AD were intended to promote a proportionate, and efficient system for disclosure, and to minimise costs.

In respect of evidence, parties will be expected to collate and produce the evidence on which they intend to rely. Each party will normally produce witness statements, and (with the court's permission) expert reports supporting their case.

Parties should consider at this stage what the most contentious issues are, so that they can instruct the most appropriate witnesses, and experts.

Witnesses are required to confirm the accuracy and truth of their evidence, and the court will impose sanctions if it is found that witnesses have not been truthful. Experts owe a duty to the court and not to the party instructing them, and are required to be independent.

Trial

Once a case proceeds to trial, the parties will present their oral arguments to a trial judge, in England the jury system is reserved for serious criminal cases and defamation cases. Evidence will be presented by experts (often based on the evidence provided in their export reports). If resident in England & Wales witnesses can be compelled to attend court, and face serious sanctions if they fail to comply.

It is increasingly common for electronic court bundles to replace paper bundles at the trial, with the judge and legal teams referring to a set of the most relevant documents – including the evidence, statements of case, and any earlier legal judgments (precedents) that support their case.

Following the conclusion of the trial, and after considering the arguments over some weeks, the judge will provide his judgment.

Costs

The general, but by no means guaranteed, rule is that the successful party will recover some or most of their costs. It is however unlikely that the successful party will recover all of their costs of the litigation from the losing party.

Appeal

In some circumstances, it may be possible to appeal the decision of the first instance judge.

Parties are advised to discuss the possibility of an appeal with their lawyers in the event that they receive an adverse first instance decision.

Enforcement

Judgments in English courts are enforceable to ensure compliance. A judgment debtor (i.e., a party against whom judgment is made) will usually have 14 days from the date of the judgment to pay the awarded sum. In the event that they don't comply with the judgment then there are a number of options to consider. To review these options and to read more about the procedures relating to enforcement see our Enforcement Client Guide at: https://www.hfw.com/insights/Client-guide-enforcement.

Settlement

Parties should regularly review whether to make or accept a settlement offer. The CPRs encourage the parties to settle cases by giving certain additional costs or interest benefits to parties who make offers that are on better terms than an ultimate judgment. The timing and amount of a settlement offer is therefore highly strategic and something to be discussed with your lawyer whether in terms of making the offer or accepting it.

Negotiated Dispute Resolution (NDR)

NDR, previously known as Alternative Dispute Resolution (**ADR**) is actively encouraged and supported by the English courts (for example in the pre-action protocol).

Pursuant to the judgment in Churchill v Merthyr Tydfil County Council[1], judges now have the power to order parties to participate in NDR. A request to engage in NDR should be given serious consideration and should only be refused in exceptional circumstances.

1 Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416

Parties refusing to participate in NDR may find themselves penalised in costs.

There are several types of NDR, each with unique processes and benefits. For example:

Mediation

- Where a neutral third party (the mediator) helps the disputing party to negotiate and reach a mutually acceptable solution.
- This process is flexible and cheaper than litigation, but does not result in a binding decision.
- For more information on mediation, please see our Mediation Client Guide at https://www.hfw.com/insights/client-guide-mediation.

Practical tips for complying with your obligations:

- Consider which jurisdiction applies to your case and what the limitation date is.
- Discuss with your lawyer ways in which you can best comply with the overriding objective of the CPR.
- Consider from the outset what information can be disclosed to your opponent.
- Also consider at an early stage whether the dispute can be appropriately settled using NDR.
- In order to avoid default judgment or incurring adverse costs, it is important that parties discuss relevant time limits with their lawyer to ensure that they are complying with the CPR.
- Consider ways in which the process can be expedited throughout the case following discussions with your lawyer e.g. using ediscloure/AI can often save money in the long run and help maximise any eventual costs recovery.

This client guide was produced by the HFW Knowledge Management team, should you require any further information or assistance with any of the issues dealt with here, please do not hesitate to contact them at KM@hfw.com, or your usual HFW contact to discuss.

NICOLA GARE
Knowledge Counsel,
Dispute Resolution
T +44 (0)20 7264 8158
E nicola.gare@hfw.com

Updated: February 2025

hfw.com