

An overview of civil proceedings in England and Wales

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Unlike in other jurisdictions, there is no single codified source of civil law. English civil law is made up of legislation by Parliament and decisions by the courts. English courts interpret legislation and are usually required to follow decisions on the same issue made 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 European Court of Justice.

The court system

The English civil court system is divided between the High Court and the county courts. This guide 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 and the Royal Courts of Justice in London. It is divided into three divisions: Chancery, Queen's Bench and Family.

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 including 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 the QBD has two main specialist courts, the Commercial Court dealing with commercial disputes and the Technology and Construction Court which deals primarily with construction and technology disputes.

The Court of Appeal deals with appeals from a decision of a High Court 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 Justices. Occasionally, matters may be referred to the European Court of Justice for guidance on points of EU law.

Lawyers

The legal profession is split between barristers, often referred to as 'counsel', and solicitors. Barristers are specialist advocates who have the right to appear in the higher courts. They also draft documents for court and give opinions in particular areas of law in which they are expert. Barristers are self-employed and do not generally deal with clients directly. Senior barristers may be appointed as Queen's Counsel; all other barristers are known as juniors.

Solicitors have day-to-day contact with clients and have the main responsibility for handling cases. They may also appear as advocates in the higher courts if they are qualified to do so. Most commercial solicitors practise 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 Civil Procedure Rules (CPR) were introduced in 1998 to govern the procedure that is followed within the English civil court system. The CPR requires that all cases are dealt with in a way that enables the court to deal with cases justly. This includes:

- ensuring 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;
- ensuring that the case is dealt with expeditiously and fairly.

This is known as the "overriding objective" of the CPR.

The path of a claim

A typical claim dealt with by the High Court will take approximately 12-18 months to get to trial from the date of issue of the claim form.

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, for example, a party may be ordered to pay costs to the other party for failing to act reasonably. In addition there are a number of 'pre-action protocols' – these set out the procedure to be followed in certain categories of dispute, such as construction or professional negligence.

Issuing proceedings and court documents: proceedings begin 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 must set out a summary of the basic facts of the claim against the defendant. Failing to do this may allow the defendant to strike out the claim. The claimant will have to pay a fee to issue the claim form, the amount of which depends on the value and nature of the claim. The documents have to be served on the defendant in accordance with special rules and within prescribed timeframes.

When the defendant is served with court proceedings, he has to indicate whether he accepts or intends to defend the claim. Again, this must be done within prescribed time limits and the court must be notified. 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. This defence is also an important document because if it is regarded as weak, the claimant can seek to strike it out or seek summary judgment against the defendant. A failure to serve a defence will allow the claimant to win the case by default.

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 - please see our [separate OUT-LAW Guide](#) for more information.

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

Case management: all cases are actively managed by the courts to ensure that they proceed properly. The courts will consider whether the likely benefits of taking a particular step will justify the cost.

Case management also allows the court to try to encourage the parties to settle their disputes without the need for trial, through alternative dispute resolution procedures (ADR) such as mediation. Please see our [separate OUT-LAW Guide](#) for more information.

Disclosure of documents: a party must disclose to the other party the documents (including electronic documents, for example, e mails) it seeks to rely on, as well as the documents which adversely affect its own or another party's case or support another party's case. This may include confidential documents if they are relevant to the dispute. Certain documents may be exempt from disclosure on the grounds of 'legal professional privilege' – please see our [separate OUT-LAW Guide](#) for more information.

Witness statements: if a party wants to provide oral evidence at trial, then it should disclose this evidence in written format. This can be a vital stage in the proceedings as what is said in a witness statement may be determine whether party seeks to settle the dispute. A witness statement should set out the facts to which the witness will testify at the trial. It must be certified to be true by the witness. Statements are exchanged several weeks before the trial. Witnesses may be cross-examined by the other party's lawyer at trial; US style depositions are not normally allowed in English proceedings. Please see our [separate OUT-LAW Guide](#) for more information.

Expert evidence: if a party needs to rely on the opinion of an expert on a particular issue, the court's permission will be needed. An expert witness must be independent, with an overriding duty to the court rather than the instructing party, and the court can order the parties to share the evidence of an expert on a particular issue. There can be more than one expert witness per case if there are several areas of expertise to address. An expert witness may be involved in court proceedings and may be called to give evidence although there are strict rules about the content and format of an expert witness's report and the evidence he may give. Please see our [separate OUT-LAW Guide](#) for more information.

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's counsel to make oral submissions and draw the judge's attention to the relevant evidence and law. 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, but he may put questions to counsel or witnesses.

In summary, the trial consists of each party's advocate setting out their case and calling on the evidence of the witnesses and experts that they seek to rely on. These witnesses may be

cross-examined by the opposing barrister. The trial will end with both parties' barristers summing up the evidence and making submissions on the relevant law. The judge will make his decision based on the evidence and arguments put before him.

Judgement may be given immediately after the trial or, in more complicated cases, reserved until a later date when the judge has reflected on the issues. If a party seeks to appeal the judgement it 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. Any breach of the CPR or the overriding objective may result in a costs sanction being imposed on the "offending" party even if that party is successful at trial overall. Generally, in the absence of unreasonable conduct, the successful party can expect to recover approximately 60-65% of its legal costs from the losing party.

Funding

It is also possible for parties to agree conditional fee agreements (CFAs) with their lawyers. A CFA allows a lawyer to charge a success fee on top of the normal fee if the case is successful, and either a reduced fee or no fee at all if the case is unsuccessful. The success fee may be payable by the other party. Contingency fees at present are prohibited. There are also other methods of funding litigation, for example, legal expense insurance and third party funding.

Enforcement of judgement

When a judgement is obtained, the unsuccessful party may make payment voluntarily. If it does not, various enforcement procedures are available including arranging for assets to be seized and sold or obtaining a charging order over the unsuccessful party's property. There is also the option of forcing the party into insolvency if the judgement sum is not paid.

Strategic issues

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

- offers to settle – while these can be made at any time in a dispute, the CPR gives the party making an offer to settle specific cost advantages provided that the offer meets prescribed requirements. For more information, please see our [separate OUT-LAW Guide to Part 36 Offers](#);
- offer to settle a dispute using ADR - a party who unreasonably refuses an offer to settle a case in this way may incur cost penalties;
- injunctions – in some cases it may be necessary to stop a party from doing something immediately or to preserve assets until after the trial. In appropriate cases, the court may grant an injunction 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 and provide an

undertaking to compensate the other party for any loss caused by the injunction being wrongly granted;

- security for costs – the usual costs rule is that the losing party will pay a substantial proportion of the winning party's legal costs. If the defendant is confident of successfully defending its claim but fears that the claimant will not or cannot pay any costs, it can apply to the court early in the proceedings for an order that the claimant provide security for any costs it may be liable to pay in certain circumstances.