

An Average Civil Claim

Civil claims are governed by the Civil Procedure Rules (CPR) which is a comprehensive set of rules and guidance that dictate how a civil claim proceeds from initial letters of claim through to trial. Essential to the CPR is the overriding objective that seeks to save costs and place parties on an equal footing.

In order to comply with the CPR it is necessary to follow a comprehensive pre-action procedure before issuing a County Court claim. Depending on the area of dispute certain pre-action protocols exist to guide litigants in how to approach a claim in its early stages. If no specific pre-action protocol exists a litigant must ensure they adequately set out their claim in an initial letter and give the Defendant the opportunity to fully respond. If necessary relevant documentation should be disclosed to the Defendant to provide the best possible opportunity of settling the claim and resolving the dispute without the intervention of the court.

If initial settlement cannot be reached the court encourage litigants to consider alternative dispute procedures such as mediation or negotiation prior to issuing court proceedings. Such options can be very effective in avoiding litigation through the court and can save time and cost. Conversely, if one party is not willing to engage in such activities costs can be increased and time wasted. However, if any chance of settlement exists ADR can provide a good means of avoiding court and at the very least often helps to narrow areas in dispute.

Once all 'out of court' options have been exhausted it becomes necessary to issue proceedings. A claimant must draft a claim form and particulars of claim clearly setting out the exact nature of the claim and what evidence is relied on to prove the claim. The court will issue the claim and provide an issue number. From this point a Claimant is in issued court proceedings and cannot withdraw without agreeing a consent order with the Defendant, formally withdrawing their claim or going to trial.

A Defendant will be served with a copy of the Claimant's pleadings and will have 14 days to file a defence or acknowledgement of service. In any event the Defendant must file a Defence within 28 days clearly setting out the reasons the claim is contested and the Defendant's version of events. At this point the Defendant may also file and serve a Counter-claim if they believe that they are in fact entitled to monies or relief.

The Claimant will then have the opportunity to respond to the defence and any counter-claim. This gives the Claimant a final chance to put forward their claim to the Defendant. Both parties will now be in a position to fully understand the position the other is taking which can lead to settlement.

The claim will from here be controlled by the court and both parties will be required to file allocation questionnaires providing the judge with information on the number of likely witnesses to be called and the complexity of the case. The claim will be allocated to one of three tracks the Small Claims Track, Fast Track or Multi Track depending on the value and complexity of the issues involved.

Next the court will either hold a Case Management Hearing or issue directions on how the claim is to proceed moving forward. Case management directions provide a timetable for the

claim up to trial. Normally the directions will include the date for disclosure of all documents relevant to the matter and a date by which inspection must be permitted.

The next stage is the drafting and serving of witness statements for all witnesses of fact. Witness statements provide the basis for what will be argued by individual witnesses at trial. Normally only information contained in a witness statement can be put forward by that witness at trial and so it is essential the information contained is accurate and detailed.

If the claim requires the use of expert evidence such as financial assessors or medical experts then directions will be given for the selection of said experts and compiling of reports. To save time and costs the court will normally direct an agreed joint expert to be appointed.

Settlement can be achieved at any stage and it is often advisable to make offers of settlement throughout the progression of the matter. Part 36 offers can be a good tactical tool in encouraging settlement as if they are rejected by the other side additional awards of costs and interest can be ordered if the party making the offer wins at trial and achieves a better outcome than that offered.

If settlement is not reached the parties will be required to complete a listing questionnaire to deal with the practicalities of the trial. The trial will then take place and ultimately the judge will find in favour of one or other parties.

The majority of claims settle before trial largely due to the litigation risk involved and the fact that proceeding to trial can cost in excess of £15,000, much of which is incurred for the trial itself.