

GREGSONS

litigation

a guide

WELCOME to the Gregsons Litigation Department guide to litigation.

Bringing a claim in the courts can be a bewildering process and so we have prepared this guide which explains the basic steps which need to be followed. Each case will differ to some extent and so please treat this as a general summary for guidance only.

- The party bringing the claim (the Claimant) files a Claim Form and Particulars of Claim and pays a court fee. These documents set out the facts of the claim and the remedy required e.g. damages, possession or property, an injunction or a declaration.
- The Defendant files a Defence and sometimes a Counterclaim. This is usually filed within 28 days of service of the claim but sometimes a longer period is required.
- The Claimant serves a Reply to Defence and a Defence to the Counterclaim. The Reply must be served by the time the court requires the Allocation Questionnaire to be returned and a Defence to the Counterclaim is usually required within 14 days. It is not unusual for a longer period to be allowed.
- The Allocation Questionnaire is completed by both parties and returned to the court. The Claimant has to pay an allocation fee. This provides the court with information about the case so it can give case management directions.
- The court will usually fix a date for a Case Management Conference after the Allocation Questionnaires have been returned. This is more usual in multi track (higher value) cases and less common in other cases. Sometimes more than one CMC is held.
- At the CMC (or on paper if no CMC is held) the court will give directions for the future conduct of the case. The first direction is often that the parties give disclosure of documents to all other parties. The parties have to provide to the other parties a list of all documents whether on paper or electronically stored which are both helpful and unhelpful to their case. Sometimes this can involve thousands of documents. At other times there will be relatively few.
- The next step is inspection. This usually involves requesting and considering copies of the other party's documents. It takes place within 7 days of disclosure by list.
- In many cases expert evidence of some sort is required. The obtaining of this evidence by the parties instructing either their own expert or a single joint expert takes place after disclosure and sometimes before and sometimes after the parties have exchanged witness statements.
- The parties prepare witness statements which consists of the evidence which they will give to the court at the trial of the matter. When ready the parties exchange statements and file the originals at the court.
- Throughout the case there are numerous applications which may be made to ensure the case is brought to trial fairly and sensibly. There is nothing standard about these applications and they depend on the facts of a particular case and the tactical requirements.

- The parties are obliged to file a Listing Questionnaires when required to do so by the court. This document is to enable the court to ascertain how the parties have progressed with their trial preparations and to see if further orders are required. Sometimes the court orders a Pre-Trial Review to be held.
- A trial date is then fixed and directions are given to the parties to prepare for trial. The trial preparations include such matters as preparing bundles of documents which need to be indexed and paginated. Sometimes when there are numerous volumes a core bundle is also required.
- Three days before trial the parties are obliged to prepare and file a skeleton argument. This constitutes the outline of their case, their legal arguments and the case law which they will be referring to. Often this is all that the Judge will have had a chance to read before the trial starts.
- The parties attend at the trial of the case. Sometimes judgment is given by the Judge at the conclusion of the trial and sometimes it is reserved which means it is written up and delivered later.
- Solicitors and Counsel often receive a draft of the judgment before it is formally delivered which affords them the opportunity of preparing submission in relation to appeal or costs. Clients are not permitted to see the draft.
- Once the judgment has been delivered the court decides costs. This is an increasingly complex area as the Judge's discretion is a wide one. A party who has won will normally be awarded their costs but sometimes costs awards are made on an issue basis and offers of settlement can mean a losing party is awarded their costs if they made a reasonable offer of settlement which was not accepted and was not beaten at trial. Costs are usually awarded on the standard basis which equates to about 70% of outlay.
- At any stage of the proceedings the parties can negotiate settlement terms. Negotiations are sometimes undertaken whilst the claim is put on hold ("stayed") or continue in parallel with the case and trial preparations. Mediation is often most likely to succeed after witness statements and experts reports have been exchanged so the parties know fully the case they are going to have to meet at trial. There are no guarantees in litigation and settlement is always commercially sensible.