

**ENGLISH COMMERCIAL COURT****PROCEEDINGS: THE ROUTE TO****SUCCESS IN RESOLVING A DISPUTE**

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**INTRODUCTION**

In 1998 the Civil Procedure Rules (CPR) were introduced to govern the procedure that is followed within the English civil court system.

The main principles are:

- To ensure that the parties are on an equal footing;
- To ensure that the case is dealt with expeditiously and fairly;
- To deal with the proceedings in ways which are proportionate to the complexity of the case and the financial position of the parties.

The most important principle is the “Overriding Objective” and it enables the court to deal with cases justly and at a proportionate cost. This overriding principle is critical. It is the cornerstone of the CPR and it has to be the starting point for all proceedings commenced and as the case proceeds.

The Commercial Court also has its own procedural rules which supplement and sometimes change the rules used elsewhere in the Queen’s Bench Division.

**THE PRELIMINARY STAGE**

A typical claim dealt with by the Commercial Court will take approximately 12-18 months to get to trial from the date of issue of the Claim Form. Litigation is costly, so the parties should

try to settle their dispute before starting court proceedings.

When there is sufficient time before the limitation period expires, the first step to be taken is to comply with the pre-action protocols set out in the CPR. This means in broad terms that before proceedings are issued, parties are required to act reasonably by giving opponents a chance to deal with the claim formally. The claimant should send a letter of claim to the prospective defendant in which he sets out details of his claim and accompanying relevant documents. Thereafter the idea is that the parties exchange relevant information and documents in an attempt to settle their dispute without recourse to litigation.

**PROCEEDINGS****Issuing proceedings and court documents**

Proceedings begin when the claimant issues a Claim Form (what used to be known as a “writ”) that must contain or be accompanied by the Particulars of Claim. Generally, when there is sufficient time to do so, it is desirable that the claimant specifically pleads his case at the time that the Claim Form is issued. However, he may simply issue a Claim Form with a general endorsement sufficient for the defendant to identify the general nature of the claim made. The claimant will also have to pay

a fee to issue the Claim Form, the amount of which depends on the value and nature of the claim. Finally, the documents have to be served on the defendant in accordance with special rules and within prescribed timeframes (the Particulars of Claim must be contained in or served with the Claim Form or served within 28 days after service of the Claim Form).

When the defendant is served with court proceedings, he has to indicate whether he accepts or intends to defend the claim (this is indicated on the acknowledgement of service which is served with the Claim Form). The defendant then has a fixed period (normally 28 days for service of Particulars of Claim) within which to serve a Defence. This Defence is an important document because if it is sufficiently weak, the claimant may seek to strike it out or seek summary judgment against the defendant. The defendant could also in appropriate cases bring an action against the claimant (Counterclaim) or commence an action against a third party for indemnity or a contribution, known as a "Part 20 Claim".

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.

### **Case management, disclosure of documents, witness statements and expert evidence**

English proceedings are actively managed by the courts to ensure that the parties' rights are

protected. It is important to highlight that case management allows the court to try to encourage the parties to settle their disputes without the need for trial. This would normally be achieved through alternative dispute resolution procedures known as "ADR", such as mediation.

After the exchange of pleadings detailed above, there will be a case management conference ("CMC") with the judge, at which a number of issues will be discussed; for example the witnesses who will be called on factual issues or the evidence that may be required on technical issues. The parties will also be expected to give reasonably accurate estimate of what they expect to be the legal costs of the proceedings through to trial.

The first step after the CMC is normally that the parties will need to disclose to each other all the documents they seek to rely on. Those documents will include those which adversely affect its own or another party's case or even confidential documents if they are relevant to the dispute. However, the documents protected by 'legal professional privilege' need not be disclosed, nor any documents relating to "without prejudice" negotiations which are covered by public interest privilege.

The next step will be the exchange of factual witness evidence in the form of witness statements. A witness statement is a document recording the evidence of a person and it is signed by that person to confirm that the contents of the statement are true. It should set out the facts to which the witness will testify at the trial and it must be certified to be true by the witness. This can be a vital stage in the

proceedings. Depending on the strength of the evidence given by the factual witnesses, a party may be forced to settle the dispute. The credibility of a factual witness is also a factor, so it is important to remember that a witness may be cross-examined by the other party's barrister at trial.

In the event a party needs to rely on the opinion of an expert on a particular issue due to its technical nature then expert evidence may be required to assist the court. Expert witness evidence is generally exchanged after factual witness evidence where required and the expert will normally be called to give evidence at trial.

## **Trial**

English trials are predominantly oral. In summary, the trial consists of each party's barristers setting out their case and calling on the evidence of the witnesses and experts that they seek to rely on. Factual Witness Statements and Expert Witness Statements will normally stand as evidence in chief, which means that the factual or expert witness does not need to repeat his or her written evidence orally. The witnesses may be cross-examined by the opposing barrister, so it is important that Factual and Expert Witnesses are fully familiar with all the disclosed documentation which touches upon their evidence so that they can deal with any questions raised in cross-examination. 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.

After the closing statements the judge may deliver his judgment immediately or, in more complicated cases, he may expressly reserve judgment until a later date. A party may try to appeal against the ruling on the ground that the decision was wrong in law or due to a serious procedural issue. Permission to appeal will only be given in limited circumstances. Despite this fact, the party seeking to appeal must obtain the permission of the court and the appeal court will not normally review the judge's decisions relating to factual evidence.

## **Cost**

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. It is important to emphasise that any breach of the CPR may result in a costs sanction being imposed on the 'offending' party, regardless of whether the party is ultimately successful at trial. Under normal circumstances the successful party can expect to recover approximately 70% of its legal costs from the losing party.

This article is intended only to give general guidance and reference in respect of the law. You are recommended to always consult a lawyer with any particular problem or query you may have.

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