

The Court Process Explained

The litigation process can often seem confusing for anyone who has little or no experience of civil disputes. This guide takes you through the process step-by-step.

Step 1: Pre-Action

Step 2: Issue of Court Proceedings

Step 3: Acknowledgement of Service and Defence

Step 4: Allocation

Step 5: Disclosure

Step 6: Witness Statements

Step 7: Expert Evidence

Step 8: Trial

Please note that this article is intended as a basic overview of the civil court process only. The Court process and the underlying law being applied to a particular case is complex and you should always seek legal advice from a professional before entering into legal proceedings. This article is not a substitute for such legal advice and should not be relied upon as such. Butcher & Barlow LLP do not accept any responsibility for any loss or damage caused by reliance upon this article.

Step 1 – Pre-Action

Contrary to popular belief, the first stage in resolving a dispute is not to immediately issue Court proceedings. Prior to doing so there is an obligation upon the parties to comply with the relevant **Pre-Action Protocol** which is applicable to the type of case. The Pre-Action Protocol for various types of claim can be found at www.justice.org.uk.

The precise requirements of the Protocols vary depending upon the type of dispute. However, generally speaking, it is necessary for **the Claimant** (the person bringing the claim) to write to **the Defendant** (the person responding to/Defending the claim)

setting out the facts of the dispute, what is being claimed and the reasons for this. This is called the **Letter of Claim**. The Claimant must also give the Defendant a reasonable period of time to investigate the matter. This period of time will vary depending upon the complexity of the issues in dispute and the urgency of the matter. A reasonable period could be as short as 7 days or as long as 4 months depending upon the subject matter.

The Defendant should acknowledge receipt of the Claimant's Letter of Claim and, once their investigations have been completed, write to the Claimant confirming whether the claim is admitted or denied. It may be that some elements of the claim are admitted but others denied, in which case the Defendant should set out their position clearly.

It is often possible to resolve a dispute at this stage without Court proceedings being issued. It is very important that both parties comply with their obligations under the Pre-Action Protocol. If they fail to do so and Court proceedings are subsequently issued, the Court has the power to order the party at fault to pay the other party's legal costs, irrespective of the final result.

Step 2 – Issue of Court Proceedings

If it has not been possible to resolve the dispute at the Pre-Action stage, the parties may then issue **Court Proceedings**. In order to do so the Claimant must complete the **Claim Form** (usually Form N1) and **Particulars of Claim** and send the same to the Court with the appropriate Court fee.

The Claim Form and Particulars of Claim provide a summary of the facts of the dispute and set out the Claimant's case. These documents form the basis of the Claimant's case and the Court is likely to limit the Claimant's case to that set out in the Particulars of Claim. It is, therefore, vital that these documents are properly drafted so as to bring the correct case against the correct party. Some claims, such as Personal Injury and Clinical Negligence, also require medical evidence and a schedule of the Claimant's losses to be provided with the Particulars of Claim.

Step 3 – Acknowledgement of Service & Defence

Once the Defendant has been served with the Claim Form & Particulars of Claim, they must file an **Acknowledgement of Service** or a **Defence** to the claim at Court within **14 days**. The Acknowledgment of Service is a document served with the Claim Form and Particulars of Claim which the Defendant must complete and return to the Court indicating whether the claim is admitted or denied. If the Defendant files an Acknowledgement of Service they will then have a further 14 days (28 days in total) to file and serve a Defence.

The Defence is the Defendant's formal response to the Particulars of Claim and sets out precisely which elements of the Particulars of Claim are admitted and denied and the reasons for this.

Again, it is vital that the Defence accurately sets out the Defendant's position. We would recommend that anyone served with Court proceedings seek professional legal advice straight away.

If the Defendant does not file an Acknowledgment of Service or Defence within the time limits set out above, the Claimant may apply to the Court for **Default Judgment**, which is a Court order that the Claimant's case is accepted in principle.

The consequences of this vary depending upon the type of claim. If the Claimant is claiming a specific sum of money, such as an unpaid invoice, the Defendant will be ordered to pay the full amount claimed straight away.

If the Claim is for a non-specific sum, such as damages for personal injury, the Court will make a series of **directions**, requiring the Claimant to take certain steps, such as obtaining medical evidence as to the extent of their injuries. The Court will then list a short hearing called a **disposal hearing**, at which the evidence will be reviewed and the Court will decide on the amount of damages to be awarded.

Step 4 – Allocation

If the Defendant defends the claim, the Court will order that both parties complete a **Directions Questionnaire** (Form N180 or N181 depending upon the value of the claim) and return it to the Court by a specified date. It will also be necessary for the parties to try and agree a series of Directions for the conduct of the claim. Some types of claim also require the parties to draft and attempt to agree a **Costs Budget**, which will set out the maximum amount of costs each party is permitted to recover from the other in the event that their claim is successful.

Depending upon the type of case and whether the directions/costs budgets have been agreed between the parties, the Court will then either make a **Directions Order** on paper or may list a short Court hearing to discuss the Directions with the parties.

The standard directions which may be ordered by the Court are as follows, although in some cases these may vary substantially.

Step 5 – Disclosure

The first direction of the Court will usually be for both parties to conduct a search for any documents which are relevant to the issues in dispute. The parties must then complete a **Disclosure List** and send this to the opposing party. There is an obligation upon both parties to disclose the existence of all relevant documents, even if they do not support their own case. However, some documents, such as advice received from a

solicitor or barrister are subject to **privilege**. These documents should still be referred to in the Disclosure List but the opposing party will not be entitled to see the same.

Once the Disclosure Lists have been exchanged the parties should then request copies of any documents they wish to see from the opposing party and these must be provided within the time limit set out by the Court.

Step 6 – Witness Statements

The next stage is for the parties to exchange **witness statements** from any person (including themselves) whom they wish to give evidence at a trial. It is very important that these statements are drafted to include everything the witness would wish to say at trial. The Court may question the witness' credibility if they say something at trial which is not stated in the witness statement.

Witness statements are vitally important to the outcome of the claim and will form the basis of witnesses' cross examination at trial. We would therefore recommend that professional advice is sought well before this step, preferably at the outset of the dispute.

Step 7 – Expert Evidence

Depending on the type of case it may or may not be necessary for the parties to rely upon an **expert witness** or witnesses. For example, in a personal injury or clinical negligence claim, it will be necessary to obtain evidence from medical experts. In building or construction disputes it is likely to be necessary to obtain evidence from a surveyor, architect or another expert with relevant expertise.

At the Allocation stage (step 4) the Court will have made an order as to whether expert evidence is necessary and, if so, from what type of expert. The Court will also have made an order as to whether one expert is to be instructed by the parties jointly or whether each party should obtain their own expert evidence.

It is therefore very important that advice is sought at an early stage. The Court is unlikely to permit the parties to rely upon any expert evidence which has not been allowed within the directions order.

As with witness statements above (step 6) expert evidence is often crucial to the success or failure of the claim. Some cases, such as clinical negligence, simply cannot be successfully pursued without supportive expert evidence as the Court will require expert advice in order to decide the case.

It is also vital that the experts are properly instructed to provide an opinion upon the issues that are important to the claim. We would recommend that professional legal advice is sought prior to experts being instructed.

Step 8 – Trial

Once the directions have been completed, the Court will **list a trial** to take place at which it will consider the parties' cases and give a judgment. Depending on the type of case and its monetary value, the Court may also order that the losing party pay the winning party's legal costs, which are likely to be significant if the matter has reached trial.

It should be noted that the parties may **settle the claim by agreement** at any stage prior to the conclusion of the trial and the Court encourages the parties to attempt to reach an agreement. There are also mechanisms to assist the parties reaching a settlement, such as **mediation** or **arbitration**.

The above is a very general guide to the standard (CPR Part 8) litigation process. However, each case is different and there are some types of disputes which will not follow the standard process. We would therefore recommend that professional legal advice is sought as soon as any dispute arises.

Greg Porter

Partner and Head of Personal Dispute Resolution

+44 (0)1606 47523

gporter@butcher-barlow.co.uk