

Litigation Process

Litigation is governed by a stringent set of rules known as the Civil Procedure Rules (“CPR”). This executive summary provides an overview of this process.

PRE-ACTION PROTOCOL

The CPR sets out a number of pre-action protocols for various claims that parties can make. Pre-action protocols are rules or guidance that should be followed by the parties prior to making a claim. The intention is to ensure that all parties are on a level playing field and that the defendant can understand the alleged claim being brought against them. The court expects potential parties to act reasonably in exchanging information and documents relevant to the dispute before proceedings are commenced. The parties should set out the legal basis and remedy they are seeking. It is hoped this will encourage early settlement and avoid the need for proceedings where possible as they should only be utilised as a last resort. The consequence of failing to abide by a pre-action protocol is that the court can impose adverse costs consequences on the party in breach.

ISSUE OF PROCEEDINGS

If a dispute cannot be resolved at the pre-action stage, proceedings may be issued. A claim is usually started by the issue of proceedings. This comprises of two documents; the Claim Form and the Particulars of Claim. The Claim Form gives information as to who the claimant and defendant are, the legal basis of the claim and the sum sought. The Particulars of Claim provide an overview of the dispute, expand on the legal basis of the claim, remedy and also the sum sought. Any evidence that supports the claim can also be attached (such as a contract).

ACKNOWLEDGEMENT OF SERVICE AND/OR DEFENCE

Once a claim has been commenced the defendant has 14 days to file a defence or an acknowledgement of service. If an acknowledgement of service is filed and the claim is disputed, then the defendant has 28 days from the service of the claim form in which to file his Defence. A Defence is a document that details the defendant’s position and indicates what parts of the claim are admitted, denied and which the claimant is required to prove. If the claim is admitted, then no Defence is required to be filed and the claimant may be able to obtain judgment in default. This means that the claimant can apply to the court to

either a) provide an order for the amount to be repaid if the claim is for a specified amount or b) provide an order for an amount of money to be decided by the court.

COUNTERCLAIM

A defendant on the receiving end of a claim has the option to make a claim against the claimant for any losses arising out of the dispute through what is known as a counterclaim. These losses have to be related to the dispute in question. The defendant can make a counterclaim against the claimant by filing a Particulars of Claim (please see above paragraph entitled issue of proceedings) with his defence or at any other time with the court's permission.

It is also possible for the defendant to make a counterclaim against a person other than the claimant or make an additional claim for contribution from another party. If these scenarios are relevant, we would be able to provide further advice in relation to this.

DIRECTIONS QUESTIONNAIRE AND COSTS BUDGETING

Once the defence has been filed the court will send out a notice of proposed allocation. This notice will require the parties to file a directions questionnaire and proposed directions by a specified date. Proposed directions are essentially a set of instructions providing a timetable for each applicable stage of the claim to trial. It is also at this stage that the parties have to file a costs budget.¹

COSTS AND CASE MANAGEMENT CONFERENCE

A costs and case management conference (“**CCMC**”) is where the parties attend a hearing before the court for it to consider the issues in dispute, set the timetable to trial and approve cost budgets. Before any CCMC, the parties are encouraged to work together to agree as much as possible between them. If everything is agreed between the parties, it may be that the CCMC is a “*rubber stamping*” exercise where the court simply approves everything. If areas of dispute remain, the court will decide what should apply to allow the matter to progress.

COMPLIANCE WITH DIRECTIONS

There is a plethora of directions that a court can lay down for the management of the claim and these will depend upon the facts of the case. In most cases, these will have already

¹ Please see our additional executive summary regarding costs budgeting

been agreed between the parties before the CCMC. Once the court has set the directions, the parties will work towards the agreed dates for each stage of the claim. Whilst it is possible to amend the timetable to trial (with agreement from the parties or the court), if a trial date is put in jeopardy it is unlikely the amendments will be granted. Failure to comply with the directions can lead to sanctions from the court and the potential strike out of the case/defence.

TRIAL

During a trial, all parties will attend with their legal team; this includes a barrister. The length of the trial will depend on the complexity of the case and number of witnesses. The trial will be public and whilst often judgment is given immediately on the day it may be that in complex cases the judgment is reserved and handed down at a later date.

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)²

A case can settle at any point during this process. ADR can take various forms such as a mediation or a “without prejudice”, or “without prejudice save as to costs” meeting. At any juncture of the litigation process a settlement offer can be made either verbally or in writing. It is important to consider making settlement offers as they can result in significant cost savings.

Tenet Compliance and Litigation Executive Summaries are designed to provide you with a basic level of understanding of legal issues in England and Wales. They are not intended to be definitive or exhaustive. Tenet Compliance and Litigation provides specialist advice on litigation and compliance issues and will be pleased to advise in detail in any matter where we are instructed.

² Please see our additional executive summary regarding ADR