

CIVIL LITIGATION IN ENGLAND & WALES**STEP BY STEP**

**C – Claimant
D- Defendant**

| Stage of UK Proceedings | Meaning |
|---|---|
| Pre-commencement of proceedings | <ul style="list-style-type: none"> • Meet with client to identify objectives and how these can be achieved. • It may be necessary for a prospective C to apply for Pre-Action Disclosure of documents prior to issue of proceedings. • The Court will make an Order for Pre-Action Disclosure where: <ul style="list-style-type: none"> (a) The respondent is likely to be a party to any subsequent proceedings; (b) The applicant is likely to be a party to the proceedings; (c) The respondent's duty by way of standard disclosure would extend to the documents of which the applicant seeks disclosure; and (d) Disclosure before proceedings would be desirable in order to dispose fairly of the anticipated proceedings, assist the dispute to be resolved without proceedings or save costs. |
| Alternative Dispute Resolution (ADR) | <ul style="list-style-type: none"> • Parties are encouraged to enter into discussions and/or negotiations prior to commencing proceedings. |

| Stage of UK Proceedings | Meaning |
|--|---|
| <p>Pre-Action Protocol</p> | <ul style="list-style-type: none"> • The aim of protocol is to establish framework in which there is an early exchange of information, so that the claim can be fully investigated, and if possible, resolved without the need for litigation. • The Protocol aims also include: <ul style="list-style-type: none"> (a) Ensuring parties are on an equal footing; (b) Saving expenses; (c) Dealing with the dispute in ways which are proportionate; <ul style="list-style-type: none"> (i) to the amount of money involved; (ii) the importance of the case; (iii) the complexity of the issues; and (iv) the financial position of each party; (d) Ensuring that it is dealt with expeditiously and fairly. |
| <p>Standard Letter of Claim</p> | <ul style="list-style-type: none"> • This should be an open letter and include the following: <ul style="list-style-type: none"> (a) Identity of any other parties involved in the dispute; (b) Clear chronological summary including key dates. (Key documents should be identified, and enclosed); (c) Allegations; (d) Explanation of how the alleged error has caused the loss claimed; (e) Estimate of financial loss (if this cannot be supplied, explain why and when details of quantum will be provided. This information should be sent as soon as possible). (f) Confirm whether an expert has been appointed, and if so, provide details. (g) Request that a copy of the Letter of Claim is forwarded to Insurers, if any. |

| Stage of UK Proceedings | Meaning |
|--|---|
| Acknowledgement of Letter of Claim | <ul style="list-style-type: none"> • The D should acknowledge the Letter of Claim within 21 days of receipt. • The D has 3 months from date of Letter of Acknowledgement to investigate and to provide Letter of Response. |
| Letter of Response/Letter of Settlement | <p>Within the 3 month period, the D should provide:</p> <ul style="list-style-type: none"> (a) Letter of Response; or (b) Letter of Settlement; or (c) Both. <ul style="list-style-type: none"> • If the Letter of Response simply denies the claim in its entirety, and there is no offer to settle, the C may commence proceedings. • Otherwise, the C should commence negotiations with the aim of concluding the settlement within 6 months of the date of acknowledgement. |
| Claim Form and Particulars of Claim ("PoC")¹ | <ul style="list-style-type: none"> • Proceedings are commenced once the C serves a Claim Form on the D, setting out the nature of the claim and the remedy sought. • PoC, which can be attached to the Claim Form or served separately 14 days following service of the Claim Form, set out the Cs case in detail, and must include a concise statement of the facts on which the C relies, and all facts necessary for the purpose of showing a complete cause of action. • Claim Form must be served within 4 months of the date of issue, although the Court has the discretion to extend this period. Any extension must be applied for prior to expiry of the 4 month period. |

¹ Pleadings have to be verified by a Statement of Truth: "*I believe that the facts stated in these Particulars of Claim/Defence are true*"

| Stage of UK Proceedings | Meaning |
|----------------------------|--|
| Limitation | <ul style="list-style-type: none"> • Prescribes fixed periods of time for issuing various types of proceedings. • Once this period of time lapses without proceedings being issued, the case becomes “<i>statute barred</i>”. • Claims in Contract or Tort – Rule is that the C has 6 years from the date when the cause of action accrued to commence proceedings. • Latent Damages – Rule is that the C has 6 years from which the date on which the cause of action accrued, or 3 years from the date of knowledge. (This applies to non-personal injury claims based on negligence, where the damage is latent, on the date when the cause of action accrued). |
| Defence² | <ul style="list-style-type: none"> • If the D wishes to defend the claim, a Defence or Acknowledgement of Service of the PoC must be filed, within 14 days of service of the PoC • Once Acknowledgment of Service has been filed, a Defence must be served within 28 days from the date of service of the PoC. • The Defence must provide a comprehensive response to the PoC, and in respect of each allegation in the PoC, there should be an admission, a denial, or, when the D has no knowledge of the matter stated, a non-admission. |
| Judgment in Default | <ul style="list-style-type: none"> • If the D fails to take any action, i.e. fails to return the Acknowledgment of Service or file a Defence, the C can obtain a Judgment in Default, (except in certain cases) i.e. the C can obtain judgment without there being a trial. |

² ibid

| Stage of UK Proceedings | Meaning |
|--|---|
| Reply | <ul style="list-style-type: none"> • The C may wish to file a Reply to the Defence, but is under no obligation to do so. • A Reply should be served if the C is alleging facts in answer to the Defence that were not included in the PoC. • If a Reply is not filed, the C is not taken to admit the matters raised in the Defence. • Any party may amend their pleadings at any time before service, but after service amendments can only be made with either: <ul style="list-style-type: none"> (a) the written consent of all the parties; or (b) the permission of the Court. |
| Request for Further Information (Part 18) | <ul style="list-style-type: none"> • A party to the proceedings or the Court itself may request further information about a case to; <ul style="list-style-type: none"> (a) clarify any matter which is in dispute in the proceedings; or (b) give additional information in relation to any such matter <p>whether or not the matter is contained or referred to in Statement of Case.</p> |
| Part 20 Proceedings | <ul style="list-style-type: none"> • A Part 20 claim is a claim other than a claim by the C against the D, and will include: <ul style="list-style-type: none"> (a) a counterclaim against the C or some other party; (c) a claim by the D against any other party for a contribution or indemnity. |

| Stage of UK Proceedings | Meaning |
|--|---|
| <p>Allocation Questionnaire (sent out by Court)</p> | <ul style="list-style-type: none"> • The Allocation Questionnaire assists the Court in assessing the value/complexity of a case and what type of Judge it should be assigned to. • The questions contained within the Allocation Questionnaire concern the number of potential witnesses for each party, whether the parties require an expert, and the estimated length of the trial. • Each party should attach a list of directions to the Questionnaire, for the management of the case, and indicate whether or not these are agreed. • Directions concern dates for disclosure of documents, exchange of witness statements and experts' reports, future Case Management Conferences (see below), and the potential period for the trial. |
| <p>Directions</p> | <ul style="list-style-type: none"> • Once the Allocation Questionnaire has been lodged at Court, the Court will allocate and provide directions as to how the case is to proceed to trial. • These directions will be contained within a Court Order, and the parties can vary certain directions by written agreement. • An application must be made to the Court if a party wishes to vary the dates for the return of the Listing Questionnaire (see below), the trial or the trial period. |

| Stage of UK Proceedings | Meaning |
|--|--|
| <p>Case Management Conference (“CMC”)</p> | <ul style="list-style-type: none"> • In a straightforward case, the Court may well give directions as to the future conduct of the case without holding a CMC. • In cases with a value of more than £15,000, the Court will hold a Case Management Conference where it feels that a more “hands on” approach is needed. • During the CMC, the Court will set directions regarding the steps to be taken to secure the progress of the claim, and ensure that all agreements that can be reached between the parties about the matters in issue, and the conduct of the claim are made. • The Court will also consider at this time whether any amendments are required to the claim or defence, whether disclosure and expert evidence is necessary and whether a split trial is appropriate (e.g. on liability and quantum). • Following the CMC, the Court will set a timetable for the steps it decides are necessary to be taken. • At this time, the Court will also consider whether this matter is suitable for Alternative Dispute Resolution/ Mediation. • The Court has a wide range of case management powers. |
| <p>Strike-Out (Part 3)</p> | <ul style="list-style-type: none"> • The Court has the power to strike out all or part of a Statement of Case if it appears that: <ul style="list-style-type: none"> (a) the Statement of Case discloses no reasonable grounds for bringing or defending the claim; (b) the Statement of Case is an abuse of the Court’s process; or (c) there has been a failure to comply with a rule, practice direction or Court order. |

| Stage of UK Proceedings | Meaning |
|--|---|
| <p>Summary Judgment (Part 24)</p> | <ul style="list-style-type: none"> • The Court has the power to give Summary Judgment against a C or D on the whole of a claim or on a particular issue if: <ul style="list-style-type: none"> (a) it considers the C has no prospect of succeeding on the claim or issue; or (b) the D has no real prospect of successfully defending the claim; and (c) there is no other compelling reason why the case or issue should be disposed of at trial. |
| <p>Security for Costs (Part 25)</p> | <ul style="list-style-type: none"> • The D may make an application to the Court to order that the C provide security for the costs that the D is likely to be awarded if the claim fails. • A D can make an application for Security for Costs to protect his position where the D is concerned that the C would not have sufficient funds to pay the D's costs, if the D were to be successful at trial. • If the Court grants the application for Security for Costs, the C is most commonly required to make a payment into court. Alternatively, the Court may allow the security to be held by the D's solicitor and will usually take the form of a banker's draft or guarantee. • On other occasions, a D's undertaking to the Court may be a sufficient requirement for security. |
| <p>Part 36 Offer</p> | <ul style="list-style-type: none"> • A Part 36 settlement offer can be put forward by either a C or D, both before and during proceedings. • A Part 36 offer cannot be made known to a Trial Judge until issues of liability and quantum have been determined. <p><u>Pre-Action Offer</u></p> <ul style="list-style-type: none"> • The prospective C can offer to settle for a specified sum. Generally, a potential C who settles before proceedings are commenced, is not entitled to recover costs or interest unless this is agreed by the D. The potential C must make clear in a Pre-Action Offer, whether this includes interest and costs. • If the potential D does not accept this and litigation commences, and at trial the C succeeds in being |

| Stage of UK Proceedings | Meaning |
|-------------------------|--|
| | <p>awarded a greater sum, the D will suffer adverse cost consequences.</p> <ul style="list-style-type: none"> • The prospective D can also make a pre-action offer, and is required to offer the potential C's costs up to the expiry of the 21 day period for acceptance. There is no obligation to offer interest, but this should be made clear. <p><u>Post Proceedings</u></p> <ul style="list-style-type: none"> • Once proceedings are issued, a D must convert the Pre-Action Part 36 Offer into a Part 36 Payment. • An offer by the D must be made via the Court by depositing the proposed sum of money with the Court (Part 36 Payment Notice), and this must happen within 14 days of service of the Claim Form. The C has 21 days from the date of service of the notice to accept. • If the C accepts, the claim is stayed and the C will be entitled to the costs of the proceedings on a standard basis up until that date. • Acceptance after the 21 day period by the C requires the consent of the D or permission of the Court. If the Court grants permission, it will decide what Costs Order it should make. • If a C does not accept the D's Part 36 Pre-Action Offer and/or Part 36 Payment, and at trial is not awarded more than the proposed amount, the C will suffer a financial penalty. <p><u>Consequences of Non-Acceptance</u></p> <ul style="list-style-type: none"> • If the C beats the Part 36 payment at trial, the D will pay the C's costs on a standard basis (subject to the Court's discretion). • If the C recovers less or the same as the Part 36 payment, the Court will make a Split Costs Order i.e. the D pays the C's costs on a standard basis up to the expiry of the time limit for acceptance, and the C pays the D's costs on the standard basis thereafter. <p><u>Settlements</u></p> <ul style="list-style-type: none"> • There is nothing to prevent the parties from making offers to settle that do not comply with Part 36, provided it is made either "<i>without prejudice save as to costs</i>" or open. • The parties can draw up a Consent Order or Judgment for sealing by the Court Officer, to avoid the requirement of making an application to the Court. |

| Stage of UK Proceedings | Meaning |
|-------------------------|---|
| | <p data-bbox="757 312 927 336"><u>Tomlin Orders</u></p> <ul data-bbox="757 360 2042 620" style="list-style-type: none"><li data-bbox="757 360 2042 539">• A Tomlin Order stays the action on agreed terms that are set out in the schedule to the Order. The parties may choose to use a Tomlin Order if:<ul data-bbox="797 437 2042 539" style="list-style-type: none"><li data-bbox="797 437 1496 464">(a) they wish to keep some or all the terms confidential; or<li data-bbox="797 483 2042 539">(b) the terms agreed include provisions that go beyond the boundaries of litigation, or the power of the Court to order.<li data-bbox="757 563 2042 620">• The Order will contain a “<i>liberty to apply</i>” clause which will allow the party to enforce the settlement by reviving the claim, and seeking an order that the terms of the settlement are complied with. |

| Stage of UK Proceedings | Meaning |
|---|--|
| Disclosure | <ul style="list-style-type: none"> • Normally 4 weeks from the date of the case being allocated to a particular track. • The parties must simultaneously exchange a List of Documents containing those documents that they rely on, as well as those documents, which adversely affect their case or the other party's case, or supports the other party's case. |
| Exchange of witness statements of fact | <ul style="list-style-type: none"> • Exchange of witness statements usually occurs 10 weeks from the allocation notice date. • There are no US style depositions, where notice is served on a party to attend an examination, which is recorded, and subsequently, that transcript submitted in evidence at trial. |
| Exchange of expert's reports | <ul style="list-style-type: none"> • Permission of Court required to appoint an expert. Parties do not have an unfettered right to use an expert, and the Court will restrict the use of an expert to that reasonably required to resolve the proceedings. • Duty of the expert is to help the Court on matters within his/her expertise, which overrides any obligation to the party from whom instructions are received. • Each party may appoint their own expert or the Court may direct that an expert is appointed. In some cases (i.e. fast track cases) the Court will usually order a single joint expert. • Reports normally exchanged 14 weeks from the allocation notice date. |
| Listing Questionnaires | <ul style="list-style-type: none"> • The purpose of the Listing Questionnaire is to check that the directions previously provided by the Court have been complied with, so that a date for the trial can be fixed (or confirm the date if one has already been fixed). • The Listing Questionnaire will be sent to the parties at least 2 weeks before it has to be filed at Court (not more than 8 weeks before the trial date or the trial period). • Parties are encouraged to exchange copies of the Questionnaires before filing them with the Court. |

| Stage of UK Proceedings | Meaning |
|-------------------------|--|
| Trial | <ul style="list-style-type: none"> • Trial usually commences within 30 weeks of filing the Allocation Questionnaire. • Cases will be decided by a Trial Judge. There are no juries in UK civil trials. |
| Costs | <ul style="list-style-type: none"> • The general rule is that the loser will be ordered to pay the winner's costs. The winner is entitled to an indemnity in respect of the costs incurred. • In reality, this does not entitle the winning party to a full indemnity in respect of costs. • At the end of trial the Court has a discretion as to whether costs are payable by one party to another, the amount of those costs and when they are paid. • When the Court assesses costs, it will assess costs on the standard basis or an indemnity basis. <ul style="list-style-type: none"> (a) <u>Standard Basis</u> • This will apply unless the Court orders otherwise. Costs on this basis must be: <ul style="list-style-type: none"> (i) proportionately and reasonably incurred; and (ii) proportionate and reasonable in amount. • Any benefit of doubt is given to the <u>paying party</u>. (b) <u>Indemnity Basis</u> • Costs on an indemnity basis are awarded as a penalty. • These costs must be reasonably incurred and reasonable in amount. • Any benefit of doubt is given to the <u>party receiving the costs</u>. • Where there is no doubt over the reasonableness of the costs, the difference between the two bases is that in assessing on the standard basis, the Court will allow only those costs that are proportionate to the matters in issue. • Costs may be awarded at interim stages during the proceedings. |

| Stage of UK Proceedings | Meaning |
|-------------------------|--|
| Enforcement | <ul style="list-style-type: none">• Once Judgment has been obtained, if the losing party fails to pay the amount awarded, the winning party will have to take steps to enforce the Judgment Debt.• Common methods of enforcement are:<ul style="list-style-type: none">(a) execution (i.e. seizure and sale of the debtor's goods);(b) Charging Order (i.e. charge on debtor's land or securities);(c) Third Party Debt Order (i.e. an Order requiring a third party who owes money to the debtor to pay it directly to the creditor);(d) Attachment of Earnings Order (i.e. an Order requiring the debtor's employer to make deductions from his earnings and to pay them to the creditor). |