

Guide to Litigation in England and Wales

Many international contracts provide for disputes to be resolved in the exclusive jurisdiction of the English Courts. The English Court system is divided between the High Court and the County Court. Typically more complicated and/or higher value claims are assigned to the High Court, which is further sub-divided between various divisions according to the nature of the dispute itself. However, almost all litigation in England will follow the process set out below.

Letter of Claim

Except in the case of urgent applications the party who wants to bring the claim – the Claimant – is expected to write a letter setting out both the legal and factual basis of the claim and what the Claimant is claiming.



Pre-Action Protocol

For many types of dispute within the English jurisdiction (for example personal injury, defamation, professional negligence and others) there is a protocol which governs the conduct of the parties to a potential claim before legal proceedings are issued. Even Claimants not expressly subject to a protocol are expected to exchange information before proceedings are issued to attempt to narrow areas of dispute.



Mediation

Mediation is a voluntary non-binding process of facilitative negotiation. It may take place at any time before or after proceedings are issued. Although the process is voluntary a party refusing mediation without good reason may expect to receive a less favourable costs order from the Court than would otherwise be the case.



Issue claim

The Claimant issues a Claim Form (giving brief details of the claim) and Particulars of Claim (which sets out the claim in more detail). The Claimant must also pay a fee to the Court.



Defence

The Defendant must file a Defence - written response to each of the allegations advanced in the Particulars of Claim. The Defendant may, if appropriate, issue a counterclaim against the Claimant or join another into the proceedings at this stage. The Defendant has at least 28 days to file a Defence, although this is often extended.



Summary Judgment

If the Claimant's case or the Defendant's defence is strong and does not involve disputed factual evidence either can ask the Court to award judgment at this stage without the need for a full trial.

Dispute Resolution Services

This fact sheet is not intended to be a full summary of the law and advice should be sought on individual situations.

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Disclosure

Both the Claimant and Defendant are obliged to disclose to their opponent copies of all documents that are directly relevant to the claim, regardless of whether they help or hinder their case.



Witness Statements

The parties exchange signed witness statements which set out the witnesses' recollection of events relevant to the claim. The witnesses will be cross-examined on the statements at trial.



Expert evidence

In some cases it will be appropriate for an expert witness to advise the Court. The parties may instruct their own experts or there may be a single joint expert who is instructed by both parties.



Trial

The trial of the claim involves submissions to the Court on points of law, cross-examination of witnesses of fact and/or evidence from expert witnesses. The Judge gives judgment on the case. It is important to note that in English Courts the Judge will generally order that the losing party pays the legal costs of the winning party.



Enforcement Options

A Judgment may be enforced by the Court Bailiffs, obtaining a Legal Charge over property owned by the Defendant, an order for the transfer of monies held by a third party Bank or by the threat of bankruptcy/winding up.

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Contact

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