



PJH Law's Client Guide to County Court and High Court claims:

1. INTRODUCTION:

This guide is intended to give you an overview of any claim in the County Court or High Court.

2. THE NATURE AND CONDUCT OF COURT PROCEEDINGS:

In the English Courts the Civil Procedure Rules (CPR) govern County Court and High Court legal proceedings.

County Court and High Court proceedings are contentious business. That means that costs follow the event. The winner ordinarily pays the loser's costs.

There are three tracks:

1. The **Fast track** is for claims up to £25k which will take a day or less to hear.
2. The **Multi-track** is for claims over £25k that should take more than a day to hear.
3. **Small claims** for claims up to £10k. Costs in those cases are not recoverable.

The CPR encourages parties to:

- a) Try to resolve their dispute by alternative dispute resolution (ADR).
- b) To comply with the pre-action protocol (PAP).
- c) To co-operate with one another.
- d) To act in a reasonable manner.
- e) To consider whether the likely benefits of taking various steps in the procedure justify the costs.

The Civil Procedure Rules are available online at:

http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm

Since the Jackson reforms were implemented in April 2013, the Courts have ensured that parties comply with the CPR.

Any failure to do so can result in a sanction being applied which can range from only allowing the court fees as a party's costs through to striking out the claim or defence. Meeting court imposed deadlines is critical.

For example being a day late with the cost budget meant in the case of Andrew Mitchell that he could only recover his court fees even if he won the claim!

It is important to get a handle of terms that are frequently used:

Admission: An admission to the Court that the defendant is liable for all or part of the claim.

Application: An application to the Court to make an order.

Assessment: The court assessment of the legal costs incurred by the party who is having their costs paid. Assessments are on the standard basis or indemnity basis.

Claimant: Individual or Company that brings the claim.

Consent Order: A court order that is made with the consent of the Claimant and Defendant.

Costs Budget: Both parties have to submit a costs budget which has to be agreed by the Court and has to be proportionate to the sums in issue.

CPR: Civil Procedure Rules.

Defendant: Individual or Company that defends the claim.

Directions: Court orders that must be complied with within the ordered time.

Directions Questionnaire: A form completed by the parties giving the court information about disclosure, number of witnesses, trial length and budgeted costs.

Disclosure: A process of disclosing to the other side all the documents in your possession that are relevant to the issues.

Indemnity Basis: The losing party pays what the winning party would have had to pay their Solicitors in legal costs had they lost.

Joinder: Joining another party to proceedings.

Part 36 offer: An offer to settle the claim.

Standard Basis: The losing party has to pay the winning party's costs that are reasonable and proportionate.

A typical fast track timetable will be along the lines of the table below:

Week	Step	Time Limit
1	Issue and service	Service must be 4 months from issue.
3	Acknowledgement of service and defence	14 days after service.
3	Provisional track allocation	On filing of defence.
7	Return of direction questionnaires.	Not less than 28 days after service of track allocation notice.
9	Allocation decision and directions given by procedural Judge	After return of directions questionnaire.
13	Disclosure of documents.	4 weeks after track allocation.
19	Exchange of witness statements.	10 weeks after track allocation.
19	Service of hearsay notices.	With exchanged witness statements.
23	Experts' reports.	14 weeks after track allocation.
29	Service of pre-trial checklists.	20 weeks after allocation.
31	Return of pre-trial checklists.	22 weeks after allocation.
36	Confirmation of trial date.	3 weeks before trial.
36	Service of notice to admit.	3 weeks before trial.
38	Lodging trial bundle.	3 to 7 days before trial.
39	Serving and filing of statement of costs.	2 days before hearing.
39	Trial	30 weeks after allocation.

A typical fast track or multi-track process is detailed below.

1. The Process: Step One- consider and offer ADR:

Court proceedings should be a last resort. It is far more cost effective and less stressful to resolve the dispute by ADR. This will involve mediation, or conciliation, arbitration or adjudication, depending on the nature of the dispute. You won't get to find out who won the dispute but crucially you will not lose in ADR. ADR usually involves some degree of compromise by all parties.

2. The Process: Step Two-fund your case:

There are two key costs. Legal costs and disbursements.

Legal Costs: There are three ways a case can be funded.

1. No win – no fee - PJH Law recognises that access to justice is important. PJH law will consider any case on a conditional fee agreement (CFA). There is also the possibility of a damages based agreement (DBA) where PJH Law recovers 50% of any award or settlement as its legal costs, but nothing if the claim is dismissed. PJH law does not offer DBAs. We have a separate guide on CFAs. A CFA means that PJH Law and a Barrister will only be paid if they win the case or the case settles. Where the case wins or settles the other side will pay PJH

Law's costs except for the success fee. You will be liable for the success fee which is usually a further 15 to 25% additional fee.

2. By the hour - you can pay us by the hour. Our usual hourly rate for this sort of work is £201.00 per hour plus vat. If you lose your case or fail to beat a part 36 offer, then you will also be liable for the other side's costs. You can insure against this with after the event insurance (ATE) but ATE premiums are not recoverable and will cost approximately 25% of the value of the claim as a premium.
3. It is possible that you might have an insurance policy which provides some legal expense cover for potential future legal problems, this is known as before the event insurance (BTE). This can be part of a business policy or a home insurance policy but the value of this will depend on the scope of the policy and any applicable limitations. If you believe you might have such a policy then please let us know in writing as soon as possible. BTE insurance can cover all or some of your legal fees.

Disbursements:

Whatever type of arrangement you have agreed with us you will be responsible for disbursements. Disbursements are travel costs, expert reports, accommodation costs (if the case involves overnight accommodation by either Counsel or solicitors, although this would be discussed and agreed with you in advance), photocopying costs, court fees and unless Counsel is acting on a CFA or DBA, Counsel's fees.

3. The Process: Step Three: Issue proceedings or defend proceedings:

Once proceedings are started they cannot be subsequently withdrawn without a consequence. Therefore steps need to be taken to see if the issues can be settled without having to issue proceedings.

Issuing or defending proceedings varies depending on the court but it involves drafting a claim or defence, completing a form and paying the inevitable court fee.

The Court will then allocate the claim to a track and to a court. Shortly after that a directions questionnaire will be agreed by the parties which covers disclosure, use of experts, witnesses, length of trial and likely costs.

4. The Process: Step Four: Offers to settle:

Either side can make an offer to settle before or after proceedings are issued.

An offer to settle the whole claim or individual issues should be made in writing.

Making an offer to settle can have a substantial impact in respect of the costs orders the Court may make. If an offer to settle (often called a Part 36 Offer) is made then you will need to take advice and consider it very carefully.

The Judge who hears the trial will not be told of the offer until after he or she has decided the issue of liability and damages.

If a Defendant's offer to settle is not accepted by the Claimant and if the Claimant continues the case

and fails to recover more than the amount offered by the Defendant the Defendant will usually be entitled to a contribution from the Claimant towards its legal costs from the date of the offer onwards and interest on those costs. Those costs can often be substantial.

If the Claimant makes an offer to settle and this is not accepted by the Defendant and the Claimant recovers more than the offer then the Claimant may be awarded increased interest on his claim usually at the base rate plus up to 10% and/or a full indemnity for his costs with increased interest on those costs.

The Claimant may also be entitled to recover an uplift of up to 10% of any damages awarded by the Court on any claim up to a value of £500,000.00 or an uplift of up to 15% where the amount awarded exceeds £500,000.00. However the total additional payment cannot exceed the sum of £75,000.00.

Settling involves compromise but provides certainty and removes the risk of an adverse cost order. If a part 36 offer is accepted then a notice of acceptance is sent to the court. The court will then assess the Claimant's costs and the Claimant is entitled to 100% of assessed costs from the Defendant.

5. The Process: Step Five: Disclosure of documents:

You will be required to disclose to your opponent any documents which are relevant to the issues to be decided regardless of whether those documents are helpful to you or the other side. This is known as 'standard disclosure' in the CPR. Disclosure is an obligation that continues until the end of the case.

It is very important that once you are aware that a dispute may arise that all documents are preserved and no documents that could be relevant are destroyed. The destruction of documents could prejudice your case and lead to cost penalties and other serious consequences. The duties in relation to the preservation and disclosure of documents apply to all documents in paper form or electronic form. It also includes any other electronic records such as videos, emails and includes any active or archived data.

If you have a company policy that automatically destroys paper or electronic documents then that must not take place. The need to preserve documents includes any documents held by the employees who may be involved in the dispute, such as personal copies of papers, diaries, and any electronic records such as e-mails. The preservation of electronic documents includes preservation of the meta-data and care should, be taken in how those documents are obtained to avoid any damage to the meta-data.

You will also have an obligation to conduct a reasonable search for documents. The need to search for documents involves a reasonable search taking into account the number of documents, the nature of complexity of proceedings and the fees and expense of the retrieval of any of the particular documents and the significance of any document which is likely to be located during the search. The scope of the search may be limited either upon our advice or after discussion or agreement with the other parties involved. The limitations could include limits as to the dates within which search should be conducted, locations or nature of the documents involved.

During the course of proceedings you are required to list all documents within the relevant categories which are or have been in your or your Company's control or power and that list will be served on the opponent's solicitors. The opponent, and possibly other parties, will be entitled to see and take copies of any of the documents that are on the list and will also be required to provide its

own list of documents. If documents are commercially sensitive or confidential it may be possible to limit the right to inspect documents or redact documents but they will need to be considered in relation to the facts of any particular case.

You may be entitled to claim legal professional privilege in respect of various documents. This is a complex area but in general terms this protects from inspection by your opponent firstly communications between you and your Solicitor for the purpose of obtaining legal advice, secondly communications between your Solicitor and a third party after litigation is contemplated with a view to conduct of litigation and thirdly communications between you and a third party the dominant objective of which was to use the communication or its contents in order to obtain legal advice or for the conduct of the dispute. This is an important area that will need to be considered in the context of your dispute and discussed with you at the appropriate time.

Once the list of documents has been prepared you will need to sign a disclosure statement verifying the list of documents and the extent of the search that has been carried out. As part of that disclosure statement you will need to certify that you understand the duty to disclose documents and that to the best of your knowledge you have carried out that duty. An incomplete or misleading disclosure statement could potentially result in the signatory being held in contempt of court and liable to a fine and/or imprisonment and, therefore, it is very important you comply with your disclosure obligations.

The creation of any new documents relating to the dispute should be approached with caution. It is possible such documents may have to be disclosed to the other party depending on the circumstances. Therefore it is very important that before creating any documents or copying any documents or circulating any documents relating to the dispute you discuss this with us in advance. We will be able to advise you on how you might approach this so that as far as possible and depending on the circumstances the creation, copying or dissemination of documents will not waive or fail to attract legal professional privilege.

6. The Process: Step Six: Statements of Truth:

Witness statements will need to be drawn up. These must be a 'warts and all' statement of the truth.

Proceedings for contempt of Court may be brought against a person or makes or causes to be made a false statement in a document verified by Statement of Truth without an honest belief in its truth. Contempt of Court is punishable by a fine and/or imprisonment and is a very serious matter.

7. The Process: Step Seven: The Trial:

There may be reading time. Witnesses are the sworn in one by one. The Claimant's case normally goes first. Witnesses are sworn in, examined, cross examined, and re-examined. There is then closing argument and the judge then retires to consider his judgment. Once judgment is delivered and order is made as to costs. The winner's legal costs are usually paid by the loser and costs are assessed by the court if they cannot be agreed. Assessment is usually on the standard basis.

Disclaimer: These guides are for guidance only and should not be treated as a substitute for specific legal advice on your own situation.

**COPYRIGHT: THE GUIDES ARE COPYRIGHT TO PJHLAW AND SHOULD NOT BE REPRODUCED
IN ANY FORMAT WITHOUT THEIR PERMISSION.**

© PJHLAW APRIL 2014 18 A MAIDEN LANE STAMFORD LINCOLNSHIRE PE9 2AZ

WWW.PJHLAW.CO.UK MAIL@PJHLAW.CO.UK

