

ENGLAND
THE INTRODUCTORY PHASE AND THE PROCEDURAL CONTRACT –
ENGLAND AND WALES

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I. COMMENCEMENT OF PROCEEDINGS

Proceedings are started in the High Court and the county court when the court issues a claim form at the request of the claimant, CPR 7.2(1). The court issues the claim form by affixing the court seal, CPR 2.6(1)(a). For the purposes of limitation of actions, the claim is brought on the date the claim form as issued was received in the court office, PD 7 para. 5.1.

Claimants must use the official forms available at the Court Service website¹ (e.g. practice form N1 for standard procedure, form N208 for the simplified Part 8 procedure). Contrary to what had been intended by Lord Woolf in his final report², there is not one single claim form for any claim in any court. However, most claim forms follow a similar pattern and a claim made on the wrong form is not struck out if the defendant has been given all the information required to understand what the claimant is seeking.³ The claim is always brought by the court issuing a claim form.

II. CONTENT OF THE CLAIM FORM

The claim form should in particular enable the court and the parties to identify and define the real issues in dispute and enable the court to allocate the case to the appropriate track and to give appropriate case management directions. As all statements of case, the claim form is subject to judicial scrutiny. Thus, the court may strike out a statement of case (CPR 3.4) and may require the parties to provide further information, CPR 18.1.

The claimant must provide his own and the defendant's name and address, brief details of the claim and the value of the claim. The claimant may provide with the claim form the particulars of claim.

The claim form and the particulars of claim if provided separately must be verified by a statement of truth signed by the claimant or his legal representative PD 22 para. 3.1. A false statement made in a document verified by statement of truth may lead to a liability for contempt of court, CPR 32.14.

The claim form should state the full name of each party, PD 7 para. 4.1(3), PD 16 para. 2.6. However, a party is sufficiently identified if it becomes clear who is party to the proceedings and who not.⁴ The claim form must also include

¹ www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do

² Lord Woolf, Access to Justice – Final Report, Chapter 12 para. 3.

³ Hannigan v Hannigan [2000] 2 F.C.R. 650 (CA).

⁴ Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd [2003] EWHC 1205 para. 21 (ChD).

address at which the claimant resides or carries on business PD 16 para. 2. An incomplete address will not delay issue of the claim form but its service. If the claimant is claiming in, or the defendant is being sued in, a representative capacity, the claim form must state what that capacity is CPR 16.2(3) and (4).

Under the heading brief details of the claim, the claimant is to provide a concise statement of the nature of the claim (CPR 16.2(1)(a)), i.e. tort, breach of contract or other civil wrong complained of.⁵ The claimant should specify the remedy he seeks, CPR 16.2(1)(b). However, the court may grant any remedy to which the claimant is entitled, even if that remedy is not specified in the claim form, CPR 16.2(5).

The claim form must contain a statement of value where the claimant is making a claim for money, CPR 16.2(1)(c). The term claim for money includes both specified and unspecified amounts. The purpose of the rule is both to avoid ambiguity and to enable the court to allocate the case to the appropriate court and track. The statement of value does not restrict the court's power to give judgment for a higher amount to which it considers the claimant to be entitled, CPR 16.3(7).

The particulars of claim may be set out in the claim form or in a separate document either accompanying the claim form or served and filed separately CPR 7.4, PD 16 para 3.1 and 3.2. The particulars of claim must contain in particular a concise statement of the facts on which the claimant relies, CPR 16.4(1)(a), PD 16 para. 3.6(1). For specific types of claims further information is required, CPR 16.4(1)(e), PD 16 para. 3.6(2), 4.1 et seq.

A claimant who intends to recover success fees or insurance premiums⁶, before starting the proceedings must file a notice of funding of claim (form N251) with the claim form, PD 43–48, para. 19.2(2).

III. ISSUING A CLAIM ELECTRONICALLY AND ELECTRONIC PROCEDURE

By CPR 7.12, a practice direction may make provision for a claimant to start a claim by requesting the issue of a claim for electronically. Two such practice directions have been issued.⁷ In 2001 Money Claim Online (“**MCOL**”) was introduced⁸ and in 2006 Possession Claims Online (“**PCOL**”)⁹

MCOL enables claimants to request the issue of a claim form by Northampton County Court online via the Court Service website, CPR 7.12, PD 7E para. 1.2(1) and 1.4. The claim must be for a fixed amount of money which is less than £ 100,000 including court fees and any solicitors' costs' (PD 7E para. 4(1)(a)) and against no more than two persons (PD 7E para. 4(4)). Particulars of claim must be set out in the claim form and in no more than 24 lines totalling no more than 1080 characters (including space and punctuation), PD 7E para. 5.2.

⁵ White Book Service 2007, para. 16.2.1.

⁶ Compare CPR 43.2.

⁷ PD 7E (Money Claim Online) and PD 55B (Possession Claims Online).

⁸ www.moneyclaim.gov.uk.

⁹ www.possessionclaim.gov.uk.

The claim is printed, issued and served by the Northampton Court in the usual way. Claims will proceed in that court unless transferred to another court, PD 7E para. 1.4. Where the claim is defended or a hearing becomes necessary, claims are transferred to the defendant's home court, PD 7E para. 14.

Where a claim has been issued electronically, the claimant may file electronically a request for judgment in default, judgment on acceptance of an admission of the whole of the amount claimed or the issue of a warrant of execution. He is able to view an electronic record of the progress of the claim, PD 7E para. 1.2(2).

PCOL was introduced for possession claims of residential property. Claims may be brought by a landlord against a tenant, solely on the ground of arrears of rent or by a mortgagee against a mortgagor, solely on the ground of default in the payment of sums due under a mortgage. The only remedy available is for payment of arrears of rent or money due under a mortgage, interest and costs, PD 55B para. 5.1(2) and (3).

IV. THE DEFENDANT'S RESPONSE

A defendant to a claim is not required to react before service of the particulars of claim, CPR 9.1(2).

Upon service of the particulars of claim, the defendant may admit the claim by filing a form of admission (CPR 9.2(a) and Part 14), contest the claim by filing a defence within 14 days of service of the particulars of claim (CPR 9.2(b) and Part 15), or file an acknowledgment of service if he needs more than 14 days to prepare the defence, or wishes to contest the jurisdiction of the court (CPR 9.2(c) and Part 10).

The defendant does not have to file an acknowledgment of service as a prerequisite to filing a defence if he files a defence within 14 days of service of the particulars of claim, CPR 15.4(1)(a). If he files an acknowledgment of service, a defence must be filed within 28 days of service of the particulars of claim, CPR 15.4(1)(b).

V. CONTENT OF THE DEFENCE

With the particulars of claim, the defendant receives a response pack containing forms he may use for the purpose of his defence, PD 15 para. 1.3. The defence must be verified by a statement of truth, CPR 22.1(1)(a), PD 15 para. 2.1, PD 16 para. 11.1.

The defence must state which of the allegations in the particulars of claim are admitted, which are denied and which allegations the defendant is unable to admit or deny, but requires the claimant to prove, CPR 16.5(1). Every allegation made in a claim should be dealt with in the defence, PD 16, para. 10.2.

Where the defendant denies an allegation he must state his reasons for doing so; and if he intends to put forward a different version of events from that given by the claimant, he must state his own version, CPR 16.5(2).

A defendant who fails to deal with an allegation but has set out in his defence the nature of his case in relation to the issue to which the allegation is relevant, shall be taken to require that allegation to be proved CPR 16.5(3).

Where the claim includes a money claim, a defendant is taken to require that any allegation relating to the amount of money claimed be proved unless he expressly admits the allegation, CPR 16.5(4)

Subject to the above provisions, a defendant who fails to deal with an allegation is taken to admit that allegation. r. 16.5(5)

If the defendant disputes the claimant's statement of value he must state why he disputes it; and if he is able, give his own statement of the value of the claim, CPR 16.5(6).

VI. CASE MANAGEMENT AT THE PRELIMINARY STAGE

Upon issuing the claim form, the court will send a notice of issue to the claimant¹⁰, open a court file¹¹ and assign the case to a master as the procedural judge responsible for managing the claim.¹²

Since a claimant is in principle free in which court to issue proceedings, one of the first case management decisions is often to transfer the case to the most appropriate court.

Upon receipt of the defence, the court will serve allocation questionnaires on each party unless this has been dispensed with, CPR 26.3(1). The questionnaires enable the court to allocate the case to one of the three case management tracks (small claims track, fast track, multi-track).¹³

The procedural judge will decide on track allocation when the defendant has filed an allocation questionnaire, or when the period for filing the allocation questionnaire has expired, whichever is the sooner, CPR 26.5(1). At the same time the court will give first case management directions.

The directions given by the court depend on which track¹⁴ the case is allocated to and the circumstances of the case. Standard directions are compiled in the appendix to PD 28.

Only in multi-track cases pre-trial hearings are not the exception.¹⁵

VII. IS THERE A FORMAL DISTINCTION WITH A PREPARATORY PHASE, A PREPARATORY HEARING OR COMPARABLE INSTITUTIONS?

There is a distinction between trial and the pre-trial phase. While the pre-trial phase is in principle a written procedure, preparatory hearings may be held if the court considers this necessary.¹⁶

¹⁰ Compare Queen's Bench Guide 2007, para. 4.1.6.

¹¹ Compare Queen's Bench Guide 2007, para. 6.2.4.

¹² Compare Queen's Bench Guide 2007, para. 6.2.1.

¹³ See below 0.

¹⁴ See below 0.

¹⁵ See below 0.

¹⁶ See below 0.

VIII. IS THERE A PREPARATORY PHASE BETWEEN THE PARTIES (INCLUDING THEIR LAWYERS) (DISCOVERY MODEL)?

To promote early settlement and a quick identification of relevant issues, pre-action protocols approved by the Head of Civil Justice have to be observed by all prospective parties before a claim form is issued. In cases not covered by any protocol, the parties are expected to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid litigation, PD Protocols, para. 4.

Non-compliance with the prescribed pre-action procedure can be taken into account by the court during proceedings and may lead to cost sanctions, CPR 3.1(4) and (5), CPR 3.9(e) and CPR 44.3(5)(a).

The court may, by CPR 31.16 order pre-action disclosure where applicant and respondent are likely to be parties to subsequent proceedings and certain conditions are satisfied.

IX. HOW AND WHEN DOES THE FIRST ORAL HEARING BEFORE COURT TAKE PLACE?

On the small claims track the first oral hearing is normally the final hearing. However, the court may hold a preliminary hearing for the consideration of the claim in certain circumstances, CPR 27.6(1).

On the fast track, normally trial will be the first oral hearing, but the court may hold preparatory hearings if it considers this necessary, CPR 28.5(3), PD 28 para. 6.3. On the multi track, preparatory hearings are the rule.

Under the CPR, there are four types of procedural hearing: allocation hearings, case management conferences, pre-trial reviews and pre-trial directions hearings.

At an allocation hearing, CPR 26.5(4), held at the allocation stage, the procedural judge will consider which track will be most suitable for the case and give first case management directions.

Case management conferences, CPR 29.3(1)(a) serve to ensure that the real issues between the parties are identified and to give the parties opportunity to propose directions for the management of the case. They may be held by the court immediately after a case is allocated to the multi-track or at any time thereafter. Where the court contemplates an order for the evidence on a particular issue to be given by a single expert, or that an assessor should be appointed, PD 29, para. 4.13, provides that the court must list a case management conference unless the parties have consented to the order in writing.

Pre-trial directions hearings, CPR 28.5(3) and 29.6(3) serve the purpose of completing preparations for trial and being able to fix the date of the trial.

Pre-trial reviews, CPR 29.3(1)(b), take place about eight to ten weeks before trial. They provide a further opportunity to ensure compliance with earlier case management directions and may help in promoting settlement.

X. WHAT WAYS ARE THERE TO TERMINATE PROCEEDINGS WITHOUT AN ORAL HEARING?

If the defendant admits the claim, CPR Part 14, or fails to reply, CPR Part 12, the claimant can request that judgment for the amount claimed be entered.

This is done as an administrative act by the court without a hearing. The claimant may file a notice of discontinuance CPR Part 38. The parties may settle the claim before an oral hearing.

CPR 27.10 provides that, on the small claims track, the court may, if all parties agree, deal with the claim without a hearing.

XI. ARE THERE DIFFERENT TYPES OF PROCEDURE, E.G. DEPENDING ON THE VALUE OF THE CLAIM OR THE SUBJECT MATTER OF PROCEEDINGS?

While the claim form issued pursuant to CPR 7 is the normal way to start proceedings, another way to start proceedings, the simplified procedure under CPR 8, is available where the nature of the relief or remedy sought, or the lack of factual dispute, would make the standard procedure unnecessarily cumbersome.

There are several modifications to normal procedure depending on the subject matter of proceedings. Thus for example, in certain claims under the Consumer Credit Act 1974, a modified procedure applies as set out in PD 7B, para. 5.

Claims brought under the normal procedure pursuant to CPR 7.2(1) are allocated to one of three different tracks pursuant to the allocation rules established in CPR 26.6. The small claims track is, in the main, the normal track for claims which have a financial value of not more than £ 5,000, the fast track is the normal track for defended actions of a value between £ 5,000 and £ 15,000 if the court considers that the trial is likely to last for no longer than one day and that there will be only limited oral expert evidence at trial. The multi track is the normal track for all other claims.

The procedure under the small-claims track is designed to enable litigants to conduct their case without legal representation, PD 26, para. 8.1. It enables the court to decide straightforward cases without the need for substantial pre-hearing preparation and the formalities of a traditional trial.

A number of important rules and procedures have no application on the small claims track. By rule 27.2 CPR, in particular, the normal rules on disclosure and inspection (CPR, part 31), the normal rules on evidence (CPR, parts 32, 33 and 35) and hearings (CPR, part 39) are declared inapplicable.

The procedure is largely within the court's discretion. CPR 27.8 provides that "the court may adopt any method of proceeding at a hearing that it considers to be fair" and that "hearings will be informal". Cases are normally heard in the judge's room or chambers and in fact it is possible for a hearing to take place anywhere, for example at a party's home or business premises.¹⁷

Multi track procedure reflects the fact that a large variety of cases are allocated to this track, from straight forward cases with a value of more than £ 15,000 to highly complex commercial cases, PD 29 para.3.2(1). Courts manage cases flexibly according to their specific needs, PD 29 para. 3.2(2)). In simpler cases courts give standard case management directions without the need for hearings, in complex cases the courts may convene several directions hearings in the form of case management conferences and pre-trial reviews.

¹⁷ Madge, Nic: Small claims in the county court, Civil Justice Quarterly (2004) 201, 205.

Under fast track procedure, the court will set out a timetable to be followed, with a fixed trial date or trial period no more than 30 weeks later, CPR 28.2.

XII. CAN THE PARTIES, ALONE OR BY AGREEMENT, INFLUENCE THE ORAL OR WRITTEN NATURE OF PROCEEDINGS?

CPR 27.10 provides that, on the small claims track, the court may, if all parties agree, deal with the claim without a hearing.

XIII. IS THERE ROOM FOR AGREEMENTS BETWEEN THE PARTIES AND THE COURT ON THE PROCEDURE TO BE FOLLOWED?

In principle, the parties may dispose of their procedural rights but not of the jurisdiction of the court.¹⁸ The CPR afford the court the duty to manage cases (CPR 1.4) in order to further the overriding objective (CPR 1.1), i.e. in particular to save time and costs.

Accordingly, a party wishing an extension of a time limit (whether by consent or otherwise) has to apply to the court under CPR 3.1(2)(a).

While the power of the parties to change the procedural rules is thus strictly limited, the courts are very flexible and may adapt procedure at the application of the parties. Generally the courts seek the cooperation of the parties also in procedural questions.

Already in the allocation questionnaire the parties are asked to propose directions they consider appropriate for the management of the case. There it is also stated that the parties should agree directions to be given by the court wherever possible.¹⁹

The parties may consent to their case being allocated to a different track. Thus, while, by CPR 26.6(1) the small claims track is the normal track for claims not exceeding £ 5000, parties to larger claims may consent to the small-claims jurisdiction.²⁰

After allocation, when the court fixes a case management hearing, it is the parties' duty to consider what directions the court should be asked to give and to make any application that may be appropriate to be dealt with at that hearing, PD 28 para. 2.5.

XIV. IS THERE CURRENTLY A REFORM-DISCUSSION ABOUT THE INTRODUCTORY PHASE OF CIVIL PROCEDURE OR MORE GENERALLY ABOUT WRITTEN AND ORAL PROCEEDINGS?

After the introduction of the Civil Procedure Rules in 1998 discussion on the changes introduced has continued but no fundamental changes to the current system are seriously considered.

¹⁸ Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd [1971] AC 850, 860 (HL); Republic of India v India Steamship Co Ltd [1993] AC 410, 421, 424 (HL).

¹⁹ Form N150.

²⁰ Madge, Nic: Small claims in the county court, Civil Justice Quarterly (2004) 201.