

CIVIL CLAIMS – Your legal action

The Civil Procedure Rules embody the Woolf Reforms and together with the relevant Practice Directions govern the conduct of all Civil litigation in England & Wales.

The Rules came in to force in 1999 creating what was a wholly new approach to litigation which we as solicitors and you as clients must both follow. They are a procedural code with the over-riding objective of enabling the Court to deal with cases justly. Since their inception they have been amended and supplemented variously.

The following is intended as a guide to what will happen if you need to take action to resolve the typical civil claims that can arise from time to time

BEFORE YOU SUE

Pre action protocols are procedures intended to help you settle disputes without ever going near a Court or issuing any claim out of the Court. You must give to the other timely and sufficient details of your case to enable negotiation to take place openly. The days of sue and be damned are long since gone: litigation is a last resort and failure to follow a protocol without good reason will usually incur a sanction in any proceedings that are taken.

Key elements to the protocols are

- content of the letter of claim;
- timetable for acknowledgements and responses from the defendant;
- content of the defendant's response;
- instruction of experts;
- disclosure of documents;
- negotiations and alternate dispute resolution; and
- costs.

These notes relate only to the law in England and Wales. They are by no means exhaustive but we hope that they will help avoid some of the difficulties which may arise. Please raise above any queries as soon as possible.

WHAT HAPPENS IN THE COURT

If compliance with protocol or the spirit of the protocol requirements fails to resolve your claim, then you can sue. The Court must further the over-riding objective by actively managing cases. This means that things will happen on your case if you are slow, late, do not comply with orders and so on. Judges are now actively involved in your case.

Active case management includes:

- encouraging the parties to co-operate with each other in the conduct of the proceedings;
- identifying the issues at an early stage;
- deciding promptly which issues need full investigation and trial and disposing summarily of the others;
- deciding the order in which issues are to be resolved;
- encouraging the parties to use an alternative dispute resolution procedure if the court considers that appropriate and facilitating the use of such procedure;
- helping parties to settle whole or part of the case;
- fixing timetables or otherwise controlling the progress of the case;
- considering whether the likely benefits of taking a particular step justify the cost of taking it;
- dealing with as many aspects of the case as it can on the same occasion;
- dealing with the case without the parties needing to attend court;
- making use of technology including telephone hearings and video conferencing links for evidence at trial;
- giving directions to ensure that the trial of the case proceeds quickly and efficiently.

DIRECTIONS

The direction stage is of the greatest importance: directions spell out the route to trial. **The judges can effectively order anything they please and make plain the consequences of your failure to comply with any order or condition.**

ALLOCATION TO TRACK

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The nature of directions given will depend upon the track to which your action is allocated.

There are 3 possible tracks:

Small claims track: financial limit £5000 (£1000 for personal injury and housing disrepair cases). No costs awarded to the winner generally.

Fast track: cases worth above the small claims limit up a maximum of £15,000 where trial will take no more than day. Only fixed costs awarded to the winner for the trial.

Multi-track: all other cases. Multi-track cases have case management conferences. At any case management conference the court will

- review the preparation thus far
- give directions about the steps to be taken to secure the progress of the claim in accordance with the over-riding objective
- ensure that all agreements that can be reached about matters in issues in the conduct of the claim are made and recorded

The solicitor with conduct of the case must attend and you the client must also attend or give us authority to make decisions in your absence. Failure will result in a wasted costs order payable in 14 days.

WHAT YOU MUST DO

DUTY TO CO-OPERATE: you, the client, and we, solicitors acting on your behalf, have a duty to help the court to further and achieve the over-riding objective. This means co-operating and assisting the court to get to the nub of the dispute. **Any party who obstructs the over-riding objective will have a draconian costs order made against them personally.**

PROPORTIONALITY: all cases are to be dealt with in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of the parties. **Deeper pockets will not be allowed to defeat the opposition.**

REASONABLENESS: all parties must take a reasonable approach to the dispute. *You are not allowed to go "over the top".*

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ALTERNATIVE DISPUTE RESOLUTION: mediation, in whatever form, exists and is available to all as an alternative to litigation. There are dispute resolution centres around the country; Reading has one. The process is consensual, relatively quick, cheap and private. For claims worth more than £15,000 or liable to occupy the court for more than 1 day at trial, considering mediation is obligatory. Failure to consider or to pursue will attract a costs penalty. **“Sue and be damned” has gone forever.**

COSTS: While the general rule is the winner gets costs, even if you win, you will not necessarily be awarded your costs, regardless of whether your solicitor satisfies the court all the work was properly carried out and wholly necessary. Costs are now gauged and ordered on the proportionality test and sometimes percentage costs will be ordered. In fast track there will be fixed costs for particular aspects of a civil claim e.g. the trial. **If you do not help us to help you in the preparation of your case you will lose out financially.**

ADVERSE COSTS ORDERS: If you lose an interlocutory application or if you break the new code you will be penalised in costs. **You have only 14 days to pay or risk losing the entire case.**

PROMPT INSTRUCTION: This is your case, not ours. When we ask for your instruction it is for a reason: we need it. You must take an active part in your action and give us immediate assistance when we ask for it. Many procedural steps must be completed within tight time scales e.g. 48 hours. **Failure results in costs penalties or worse.**

STATEMENT OF TRUTH: Almost all documents need a signed statement of truth, some by you the client personally e.g. disclosure. Failure to sign will result in your claim or defence being struck out. **A statement of truth which is adjudged untrue at trial may result in committal to prison for contempt of court.**

If you require further information or advice please contact Hilary Messer at our Pangbourne office on 0118 9842266 or hilary@rwp-solicitors.co.uk

rwp solicitors Solicitors, Meadow House, 22 Reading Road, Pangbourne, Berkshire, RG8 7LY

Tel: 0118 9842266 **Fax:** 0118 9845133 **e-mail:** pangbourne@rwp-solicitors.co.uk

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