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L.E. LAW INFORMATION SHEET NO. 1

GUIDE TO LITIGATION (2nd edition, April 2014)

Introduction

This is intended to be only a very general introduction to typical stages in a court case in the High Court or County Court. It has been substantially revised to take account of the "Jackson Reforms" introduced in April 2013.

Please remember:-

- Certain types of case (e.g. mortgage possession actions) have special rules which apply

- Every case is different. The Court has very wide case management powers and can adapt the template to fit the case.

- Very few cases go right through to trial. Many cases will settle out of court, often without proceedings even beginning or will not reach trial for a variety of reasons.

- The main stages of a typical case (described in more detail below) are:

    1. Preliminary investigation
    2. Statements of Case
    3. Allocation/Directions
    4. Costs Budgets
    5. Disclosure of Documents
    6. Witness statements and expert reports
    7. Preparation for Trial
    8. Trial
    9. Appeals
    10. Enforcement

1. Preliminary Investigation

Under the Court reforms introduced in April 1999, parties were strongly encouraged to avoid Court proceedings if possible. One aspect of this is for the exchange of information, documents and evidence before proceedings are commenced. For many types of claim (eg personal injury, clinical negligence, construction disputes) pre-action protocols have been introduced setting out the exact steps parties are expected to take before commencing proceedings and a timetable for doing so. Parties may be penalised in costs if they fail to follow protocols.

To take personal injury as an example, under the protocol:

- A formal letter of claim must be sent by the Claimant
- A detailed response must be sent within a set time
- Exchange of documents must take place
- An expert medical report must be obtained (by a jointly agreed doctor if possible).

In many cases we may need to investigate your case before even writing to the opponent to make a claim. This might include considering documentation, speaking to witnesses and/or obtaining expert evidence. Further work may be necessary depending on the response received from the opponent.

2. Statements of Case

Assuming parties cannot settle, the Claimant commences proceedings by sending to the Court:

- *A Claim form*: a simple document giving the name of the parties.
- *Particulars of Claim*: a document setting out what the claim is all about. We may draft this for you, or in more complex cases ask a barrister to.
- *Cheque for Court fee*: This varies according to the value of the claim.

Simple money claims can be issued online using the Money Claims Online service.

The Defendant then has 14 days to acknowledge receipt of papers, and 28 days to serve his Defence, saying whether he admits or denies the claim, and if he denies it, his reasons. He may also counterclaim. The Claimant can reply to the Defence if he wishes, and must serve a Defence to Counterclaim (if a counterclaim is made by the Defendant).

3. Allocation/Directions

Once Statements have been exchanged, parties must complete a Court document called the Directions Questionnaire. This tells the Court the approximate value of the case, which witnesses are likely to be called, whether expert evidence is necessary, how long the parties think the trial is likely to last and an estimate of costs.

The Court then chooses which of three 'tracks' to allocate the Claim to. Generally these are:

- *Small Claims*: for claims under £10,000.
- *Fast Track*: for claims £10,000 to £25,000.
- *Multi track*: for claims more than £25,000 or no monetary value.

The Court will then give directions for future conduct of the case. In small claims and fast track it is likely standard directions will be issued without a hearing. In multi-track the Court will probably fix a hearing (called a Case Management Conference) unless parties agree directions which the Court is willing to approve.

If a party fails to comply with directions contained in an order or in the rules of court, he may well find sanctions are imposed by the court. The 2013 Jackson Reforms place much greater emphasis on avoidance of delay and compliance with court timetables. Many rules and orders will provide that if a party fails to take the necessary step by the time specified, his case will be struck out.

Parties are therefore expected to apply to the court for extensions of time before the relevant deadline is reached, or (if the deadline has already passed) to seek relief from sanctions. The party in default can expect to pay the costs of such an application.

The message therefore from the new rules and the cases that have considered them in the first 12 months after the rule changes, is that parties MUST comply strictly with deadlines wherever possible, and if they cannot for any reason MUST seek an extension of time from the court or they could find their case is not allowed to proceed.

4. Costs Budgets

In Multi Track cases, both sides will need to prepare costs budgets. These give the predicted costs to be incurred for each stage of the case up to and including trial. The budget will include not only the estimated costs of the solicitors, but of the barristers, the experts (if any) and other expenses connected with the case.

The costs budgets will be exchanged, and the parties may try to agree budgets. If they cannot, the court will review the budgets at an early stage (usually at the Case Management Conference, or at a separate Costs hearing).

Once the budget has been fixed for each side, they will not be allowed to recover more from the other side if they win the case unless the court has varied the budget in the meantime. This means that the budget has to be carefully thought out, and kept under review throughout the case.

5. Disclosure of Documents

Usually the next step is the disclosure of documents. In many cases, relatively few documents are involved and this is not a very significant stage of the action, especially if documents are exchanged pre-action. In other cases, e.g. many commercial disputes, documents can be very numerous and the case can turn on what documents emerge.

As a result of the 2013 reforms, the courts have much wider powers to decide what level of disclosure will be appropriate, (or even that no disclosure is required). We will give detailed guidance nearer the time as to what documents need to be disclosed when it is clearer what the issues in the case are, but the general rule is that you must disclose any documents that support your case and which harm your case or support the opposition. Do not destroy or hold back any such documents.

Please also ensure as soon as you become involved in a dispute that may result in court proceedings, that all documents (including electronic documents) are preserved until the end of the case and are not destroyed or deleted.

"Documents" includes not only paper, but photos, emails, texts and anything stored on computers, phones and other devices.

6. Witness Statements and Expert Reports

After disclosure has taken place, the next step usually requires parties to exchange signed witness statements from all relevant witnesses.

Parties cannot usually call any witness at trial unless a Statement has been disclosed to the opposition setting out his evidence. Often the Judge at trial will not allow witnesses to embellish their statement. Therefore it is very important that the Witness Statement is complete and accurate.

Witnesses are only allowed to give evidence of the facts and not give their opinion. Only experts can give opinions. The general rule is that no expert evidence will be allowed unless the court has permitted it in advance. The parties may be allowed to call one or more experts each as appropriate to the issues in the case, or they may (with a view to saving costs) be required to "share" an expert, known as a Single Joint Expert.

In some cases no expert evidence is necessary. In others it will be essential. For example, in personal injury cases medical reports from one or more doctors will be required. An expert's evidence must be disclosed in a written report.

Parties are usually permitted to put questions to an expert on their report (whether the expert was instructed by their opponent or is a Single Joint Expert) but must usually do so within 28 days of receiving the report.

7. Preparation for Trial

Exchange of Witness Statements and Reports may leave relatively little time before the trial. It may be only weeks before the trial (especially in the case of fast track) or may be several months. In fast track cases, the Court will have fixed a trial period at an early stage and will expect the parties to stick to it. In multi track cases the Court will usually set a provisional trial window at the directions stage (e.g. a period of 2-3 months within which the trial will take place), but parties will need to submit a pre-trial checklist to get a definite trial date and pay a further Court fee.

The Court will also want trial bundles for use by the Judge and witnesses. Well-prepared bundles save considerable time during a trial and therefore save costs.

Other preparation will depend on the particular case and directions made by the Court, for example experts may be called to meet up and try to narrow the issues in dispute.

8. Trial

In small claims cases the trial may only take an hour or two.

In fast track cases the trial is expected to last no more than one day.

In multi track cases a time estimate will be given, but it can overrun depending on a number of factors:-

- How quick the Judge is
- How quickly cross-examination of witnesses takes place
- Whether lengthy legal argument is necessary

Many factors are outside of our control and therefore the length and cost of the trial can only be a rough estimate.

At the end of a trial the Judge may give a decision there and then. In longer, more complicated cases it is likely he will want time to think, draft out his judgment, and hand it out at a later date.

9. Appeals

Any interim order made by the court before the trial of the action can be appealed, but unless the order is particularly significant it would be relatively unusual to appeal an interim order.

A more common appeal will be from the final judgment given at the end of the trial, by the losing party.

Such an appeal cannot be brought as of right; permission has to be obtained either from the trial judge or from the court that would hear the appeal.

Permission will only be given if it appears an error of law has been made, or the judge has come to a perverse decision. This is not an easy hurdle to overcome, and many appeals will be dismissed at the permission stage.

If permission is given, the appeal will be listed for hearing at a later date when both parties will have an opportunity to be represented and put forward their arguments.

Please note the appeal court will not generally permit any new evidence to be considered. The appeal will be based on the evidence heard at trial, and the reasons given by the trial judge who heard that evidence and gave judgment.

There are strict time limits applying to all appeals, whether from an interim order or a final judgment which we will advise you on where necessary.

10. Enforcement

A Defendant usually has 14 days to pay any money judgment. After that, a money judgment can be enforced in a number of different ways. Each has its pros and cons.

(a) Bailiffs (County Court)/Higher Court Enforcement Officers (High Court)
Can attend the debtor's home or work address, and remove goods for sale at auction.

(b) Charging Order on land
If the Defendant owns land (or a share in land), a charge can be obtained on the land (like a mortgage), and it may then be possible to force a sale of the land.

(c) Third Party Debt Order
If the Defendant has money in a bank account, or anyone else owes him money, the bank or other person can be ordered to pay that money to the Claimant to go towards the Judgment

(d) Attachment of Earnings order
If the Defendant is in employment, his employer can be ordered to pay a defined amount each month out of his wages towards the judgment.

(e) Bankruptcy/Liquidation
As a last resort, an individual can be made bankrupt or a company put into liquidation.

Methods (a) to (d) above are relatively straightforward, and will usually only involve a simple application, payment of a court fee, and one short hearing at court.

Method (e) is far more involved, and will involve significant fees and expenses.

Disclaimer

This information sheet is for guidance only and does not avoid the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

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