

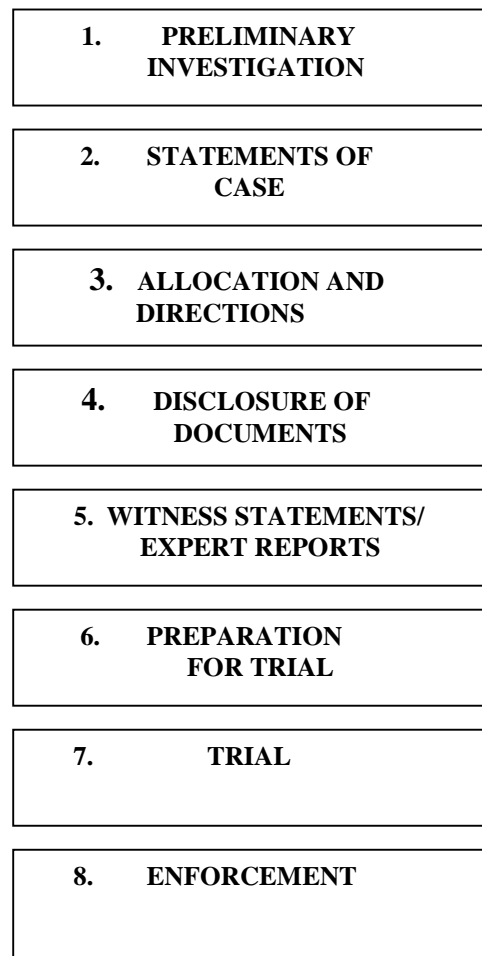
L.E. LAW INFORMATION SHEET NO. 1

GUIDE TO LITIGATION

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. 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 are:



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1. Preliminary Investigation

Under the Court reforms introduced in April 1999, parties are strongly encouraged to avoid Court proceedings if possible. One aspect encouraged is for the exchange of information, documents and evidence before proceedings are commenced. For several types of claim (personal injury, clinical negligence, construction disputes) pre-action protocols have been introduced setting out exact steps parties are expected to take before commencing proceedings and 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:

- *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.

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 any).

3. Allocation/Directions

Once Statements have been exchanged, parties must complete a Court document called the Allocation 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 £5,000.
- *Fast Track*: for claims £5,000 to £15,000.
- *Multi track*: for claims more than £15,000 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 hearing. In multi-track the Court will probably fix a hearing (called a Case Management Conference) unless parties agree directions which the Court is happy to approve.

If a party fails to comply with directions, the other party can apply for an Order forcing him to do so. The party in default can expect to pay the costs of such an application. Repeated failure to comply may well result in the party being debarred from pursuing or defending the case.

4. Disclosure of Documents

Usually the next step is the disclosure of documents. In many cases, relatively few documents are involved and this 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.

We will give detailed guidance nearer the time as to what documents need to be disclosed 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.

“Documents” includes not only paper, but photos, and anything stored on computer.

5. Witness Statements/Expert Reports

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. 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. An expert’s evidence must be disclosed in a report as appropriate (similar to a Witness Statement).

6. **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, 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 saves 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.

7. **Trial**

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

In fast track cases the trial is expected to be 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.

8. **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)/Sheriffs (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, a charge can be obtained on the land (like a mortgage), and it may then 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) **Bankruptcy/Liquidation**

As a last resort, an individual can be made bankrupt or a company put into liquidation.

Disclaimer

This information sheet is for guidance only and does not remove 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.