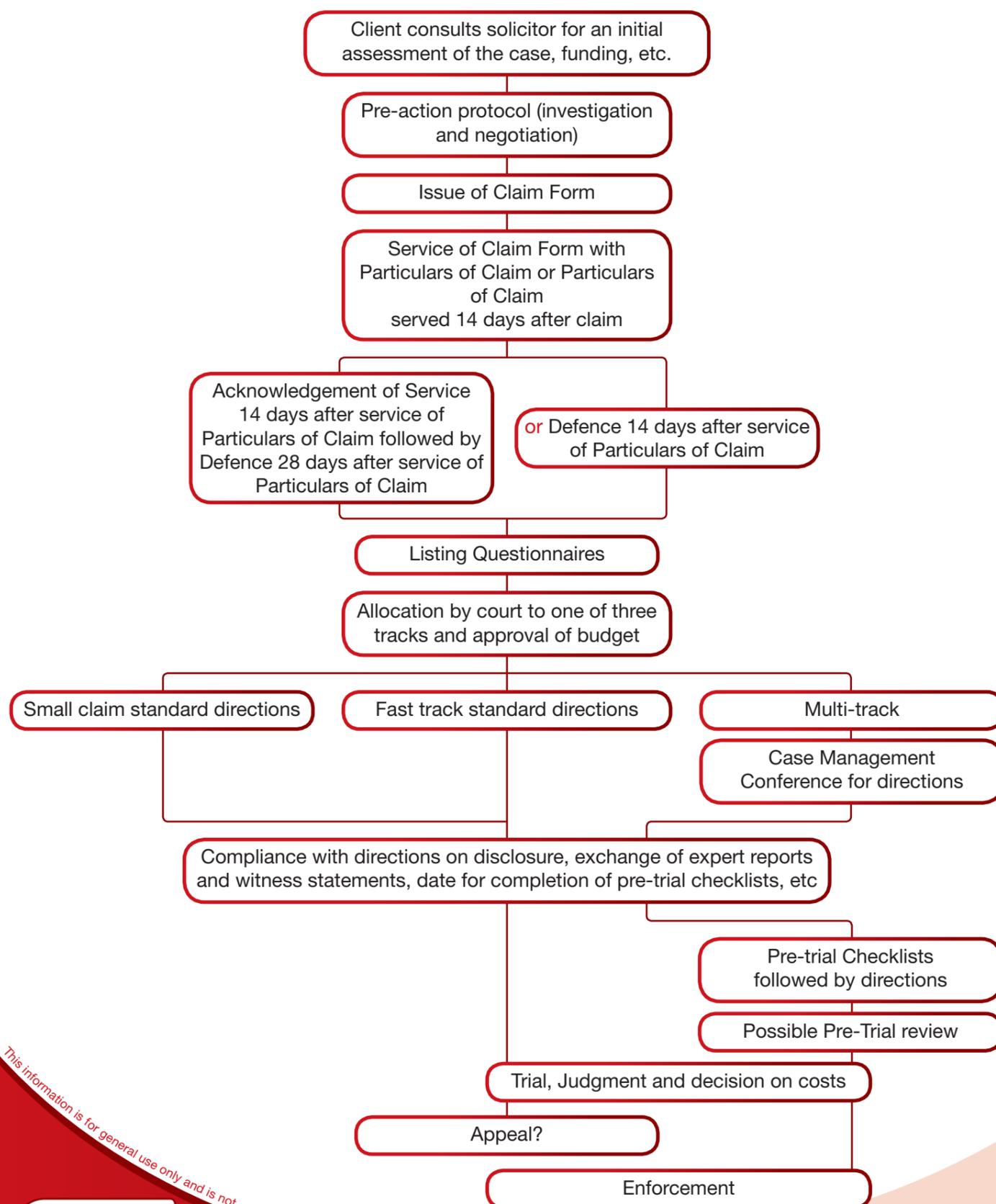


The Structure of Defended Claims



An overview of Civil Litigation Claims

Initial assessment

Upon first being consulted and upon agreement as to funding we will take your instructions. Based on that we will then give you our initial view of the facts and law and advise you on the issues involved and options available to you. We will discuss with you the likely costs and funding options and the time scales involved.

Initial action

We will confirm our initial assessment in writing subject to agreement and funding. We will then commence further enquiries on your behalf and contact your opponent. Thereafter we will report any significant developments and advise you throughout the claim generally. In particular, we will review the value and strength of your claim and the likely cost of pursuing the claim. We will monitor the costs that have been incurred and which we estimate will occur.

Negotiations

We will contact your opponents on a regular basis with a view to negotiating an early settlement of your claim where this is appropriate.

Pre-Action Protocols

The Protocols require potential Claimants to write a letter of claim to the Defendant giving a clear summary of the facts on which the claim is based. You must give sufficient information to allow your opponent to investigate the claim fully. If you are the Claimant, we will prepare the letter of claim for you.

The Protocols expect Defendants should respond fully to the letter of claim within a reasonable period. If you are the Defendant, we will prepare your letter of response.

What you say in the initial letter will have a bearing on the claim, if it proceeds to court. It is vital that the information in the letter is correct. We will expect you to approve the content of the letter.

Offers to settle

If relevant to your matter we will discuss the tactics, procedure and consequences of making and receiving offers.

Commencement of proceedings

If you start the proceedings, you are the 'Claimant'. If your opponent issues proceedings against you, you are the 'Defendant'. The value of the claim will largely determine whether it is allocated to the small claims track (for claims up to £10,000), the fast track (for claims between £10,000 and £25,000) or the multi-track (for higher value claims or claims for which remedies sought are not just of a monetary nature, e.g. Injunctions).

We will attend to the drafting of your statement of case, which sets out the arguments to support your case, and all relevant court paperwork.

Timescales

The nature, complexity and subject matter of your claim will determine the timescales involved. There may be protracted negotiations with your opponent before proceedings are commenced. It is not possible at the outset to provide you with any meaningful estimate of timescales. By way of illustration, we set out the standard timetable for a typical fast track claim from the allocation hearing:

any disclosure of documents	6 weeks
exchange of witness statements	12 weeks
exchange of expert's reports if any	16 weeks
sending out of pre-trial checklists by the court	20 weeks
<i>giving the court information to enable a timetable to be planned</i>	
filing of completed pre-trial checklists	22 weeks
hearing	30 weeks

Directions

The term 'directions' refers to any order given by the court which tells the parties, or one party, to do something. As well as telling parties what they have to do to prepare for a court hearing, directions will also tell parties when they must do it by. Sometimes one party will have to do something before another party and sometimes parties must all act simultaneously.

Deadlines need to be met! Your co-operation is essential both in terms of the actual work and funding matters. Parties may find if they fail to comply with directions their case is struck out or at least their prospects harmed.

Documents

The Court will often order some disclosure of documents. This involves a duty to search for and to disclose documents that are or have been in your possession or control. Disclosure in this context means revealing the existence of a document and allowing your opponent to inspect it if you still possess it.

This obligation normally extends to:

- ✦ documents which you intend to rely on to prove your claim
- ✦ documents which adversely affect your case
- ✦ documents which adversely affect your opponent's case and
- ✦ documents which support your opponent's case

It is vital that you tell us about and disclose to us any documents which may be relevant to your claim at an early stage if we are to be able to advise you properly. We shall advise you if any documents are privileged from disclosure or are otherwise inappropriate for disclosure and we will prepare the formal list of documents for you.

The Court Rules are attempting to cut down on the expense and detail of disclosure. Therefore we will need your assistance as it is quite likely the court may (with a view to saving costs) restrict the disclosure it requires either side to give the other.

Witness evidence

It is likely that you will be required to give evidence about your case. Initially this will be in the form of a written statement. If the matter proceeds to a full trial you will be required to attend court to give evidence in person. We will need to obtain witness statements from all relevant witnesses to the facts upon which your case is based. Your witnesses may also be required to attend court to give evidence. We will contact your witnesses and draft the witness statements, assuming they are helpful.

Expert evidence

Your case may require the evidence of experts in a relevant field. We will let you know if this is likely to be the case. The parties are often required to attempt to agree a joint expert to give a single report on the issues. You must co-operate with the reasonable requests, such as allowing access to your property, of any expert (even an expert instructed by your opponent) to assist in preparing their report. We will attempt to agree instructions for a joint expert or prepare instructions to your expert.

Case Budget

In cases issued after 1 April 2013 the Court will soon after a Defence has been filed, hold a hearing amongst other things to approve a budget for the case. This will require detailed information from the parties. Any such budget will almost certainly 'set the scene' as to how a court will allow the case to proceed. Any such budget is likely to have a marked effect on costs orders between the parties.

Preparation and listing for trial

If it is not possible to settle your claim without proceeding to a hearing then we will arrange for you to be represented at the hearing. We will discuss what to expect at the hearing in the run up to the hearing date. You must let us know any dates upon which you are unable to attend a hearing, for example if you have a hospital appointment or are on holiday.

Steps following the hearing

Money received under a Judgment in your favour are paid to this firm. We will account to you for this money, subject to payment of our costs and expenses. Your costs will be calculated in accordance with your agreement with us.

Recovery of costs

In the event of a successful outcome at court the trial judge may assess the amount of costs that the losing party must pay to the winning party and then direct that this should be paid by a specified date (usually within 14-28 days). This is known as summary assessment of costs. Assuming a budget has been approved this is likely to form a big share of the assessed costs.

Where no summary assessment is made and if we cannot agree the level of costs with the opponent then there may be what is known as detailed assessment of costs. This procedure can take several months.

Even if costs are awarded in your favour, there almost certainly will be a shortfall between the amount of costs incurred on your behalf by us and the amount of costs actually recovered from your opponent. You will be obliged to meet this shortfall.

Enforcing a Judgment

If your opponent is ordered to pay money to you and does not pay, you will need to consider taking further action to recover the sums owed. We can assist you in deciding the best action to take. You should be aware that enforcing a Judgment will take further time and we will need your authority to incur additional costs should you instruct us to undertake this additional work. Much enforcement work can be undertaken on a fixed fee basis and we will provide you with details should the need arise.

Generally

We depend upon your full co-operation and complete instructions to progress your claim effectively. We will need to see any documents or records that may be relevant to your case at the earliest possible opportunity. Overleaf we have included a flow chart showing the stages of a typical County Court claim. All claims are different and this chart is for illustrative purposes only.

Key Responsibilities

Our responsibilities

Assuming on agreed instruction from you we will:

- ✦ attend to the drafting of relevant court documentation
- ✦ keep you updated on the progress of your matter
- ✦ provide the costs information throughout
- ✦ advise you on the issues involved and the options available to you
- ✦ advise you on the law and investigate the facts of the case
- ✦ consider with you whether the potential outcomes will justify the expense and risk involved
- ✦ advise on negotiation tactics and settlement offers
- ✦ assist with mediation or alternative dispute resolution
- ✦ prepare your case for trial and arrange representation for the hearing

Your responsibilities

You must:

- ✦ provide us with full, accurate and timely instructions
- ✦ ensure that you safely guard documents, correspondence (including emails), real evidence, etc. which is or may be relevant to your case
- ✦ comply with your funding obligations to us
- ✦ provide us with details of any potential witnesses of facts which are relevant to your case
- ✦ help us to comply with any court orders or directions
- ✦ keep us informed of any dates on which you will be unavailable for a court hearing
- ✦ address any tax or accountancy issues relating to settlement or award