

## **TRIAL**

### **General**

The trial represents the culmination of legal proceedings. The vast majority of proceedings will be settled long in advance of a formal trial. However, if there are matters of fact in dispute or if the outcome is finely balanced, the claim dispute may proceed to a full trial.

Generally, a claim will require proof of certain facts which as a matter of law have certain consequences. For example, on the sale of goods, a supplier makes an enforceable promise that they are fit for their purpose. A breach of this promise would entitle the purchaser to certain rights which depending on circumstances may entitle him to a court order for the return of the goods or an order for damages or both.

In a trial of this kind of dispute, the key matter is whether the goods were fit for purpose. This may be contended. Other uncontroversial facts, such as the fact that the goods were purchased and delivered, may be admitted or taken as proved. The evidence and hearing will be directed towards proving the key matters in dispute namely whether in this case the goods were fit for purpose and if this is not the extent of loss and damage arising.

Facts will generally be proved by verbal evidence given by witnesses under oath. The Civil Procedure Rules have simplified matters in some cases so that witness statements are received by the Court in place of oral evidence.

A claimant must prove his case on the “balance of probabilities”. This means that the judge concludes with the facts put forward by the claimant are more likely than those put forward by the defendant on disputed matters.

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The claimant must generally prepare a “trial bundle” within a couple of days of the start of the trial. This must consist of full details of the claim, statements of case, summary of the case, witness statement, witness summaries, notices of evidence, hearsay evidence, notice of evidence which it is intended to rely on which is not in witness statements, expert reports and responses, orders given giving directions as to the conduct of trial and other necessary documents.

Each party must prepare a case summary for use in the trial. This is to assist the Court and the parties by indicating the points which are at issue and the nature of the arguments about them. The Judge will read these in advance.

The case summary should review the parties’ submissions of fact in relation to its issue. It should concisely set out the propositions of law relied with reference to the legal basis for the propositions.

## **Timetable**

In both fast-track and multi-track cases a trial timetable will be fixed after filing of the pre-trial check list. It may, for example, limit the time for cross examination and re-examination of witnesses. In more complicated cases, the timetable will usually be set at pre-trial review. The fast-track trial should generally be completed within a single day. A typical timetable of the trial might be as follows:-

Judge reading time - 20 minutes

Opening speeches – 10 minutes

Cross examination, re-examination of claimant's witnesses – 90 minutes

Cross examination, re-examination of defendant's witnesses – 90 minutes

Defendant's closing submissions – 15 minutes

Claimant's closing submissions – 15 minutes

Judge preparing and delivering judgement – 30 minutes

Summary assessment of costs – 20 minutes

In multi-track cases, the Judge will normally sit to hear the trials on consecutive days until it has been completed.

## **Hearing of Case**

The claimant, through his advocate, may make an opening speech setting out the background to the case, the facts and issues. The claimant and his witnesses will then give evidence. In most cases the witness statement will be his so called “evidence in chief” i.e. his uncontested account of the facts. The evidence in chief is the facts as set out by the claimant and witnesses before cross examination. Alternatively, the witness may simply be asked to confirm that his witness statement is correct. If a limited examination “in chief” is allowed by the judge, then the usual rule is that the witness can not be asked “leading” questions to elicit his account of the facts. A leading question is one that suggests its answers.

“Cross examination” is the questioning by the one party's lawyers of the other party's witness for the purpose of examining, casting doubt and raising qualifications on his version of the facts. Leading questions are allowed. The purpose is to extract evidence for the other side and to discredit and undermine the person being cross examined so as to make his evidence less believable, either generally or in relation to specific elements. This may involve highlighting inconsistencies or improbabilities. It may involve alleging a witness is biased. If a witness has previous convictions, it is possible to cross examine on these in order to show the witness's character in a bad light.

After cross examination, the lawyer for the party who put the witness forward, is given the opportunity to ask further questions. “Re-examination” is limited to matters arising out of cross examination. No new issues can be introduced. If, for example, some ambiguity has been left as a result of cross examination, re-examination might be an opportunity to resolve and try and restore the witnesses' credibility. After evidence has been given, the defence advocate can usually make a speech followed by the claimant's advocate.

### **Decision / Judgment of Court**

The judge may give his judgement immediately, after a short adjournment or it may be reserved until a later date. If the Court gives judgement on a claim and counterclaim and there is a balance in favour of one party the Court, will order the party whose judgement is for the lesser amount to pay the balance.

The judgement will normally address the following issues:-

- **Liability.** This will depend on whether the claimant has made out the claim at law. The judge should review all the evidence and give reasons for his findings.
- **Amount of compensation/damages.** If the claim is for an unspecified amount, then the judge will deal with the various types of damage and loss claimed.

- Interest. Once the trial judge has indicated he will award interest, the rate and the period. It is for the advocate to work out the figures.
- Costs. The general rule is that the unsuccessful party is ordered to pay costs. At the end of a fast-track trial the trial judge will not only make an order for costs but assess the amount payable. At the end of a multi-track trial the judge will determine who should pay the costs. A different judge known as a cost judge will determine the amount at a later hearing failing agreement.

Interest will normally be awarded, provided it has been claimed. There may be entitlement to interest under the terms of the relevant contract or under the Late Payment of Commercial Debts (Interest) Act. Interest may be awarded on damages at the rate of 8% per annum from the date of the relevant incident up to the date of judgement. Interest arises after judgement at a rate set by law from time to time.

### **Costs**

The general rule is that the loser in litigation, pays the winner's costs. In reality the receiving party will not receive a full indemnity in relation to costs. The paying party will challenge particular items, arguing the works was unnecessary or performed too expensively.

While the unsuccessful party will generally be ordered to pay the costs of the successful party, the Court may make a different order if it thinks appropriate. All the circumstances would be considered, including the conduct of the parties, whether the parties succeeded in part of his case, whether there has been a payment into Court or there has been an offer to settle. A successful claimant who has rushed a matter in a heavy handed way into Court, against a smaller opponent without genuinely seeking to negotiate, can be penalised in costs.

The general rule is that the Court should, if possible, make a summary assessment of the costs at the conclusion of the case. To assist the Court in making a summary

assessment, the parties must file and serve a breakdown of their costs at least 24 hours before the hearing. There are certain limitations on the amount of costs a Court may award. This depends on the value of the claim.

In multi-track cases, the detailed assessment procedure is commenced by a party serving notices and a copy of a bill of costs. This must be done within three months of the date of the judgement. They are usually prepared by legal cost accountants either in legal firms or externally. The paying party has 21 days from service of notice. Where a winning party has funded litigation by a conditional fee agreement he is likely to pay the solicitor a success fee. He may also have paid a premium for “after the event” insurance. Where the costs order is made in that party's favour, the costs payable include a success fee and the premium. The paying party is liable for the success fee and premium only to the extent that they are reasonable and where the standard basis applies, are proportionate.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.