

10 March 2017

# 3HR Legal Weekly

## Commercial

### Commercial Disputes – Part 2

In our previous newsletter we looked at mediation, arbitration and the small claims track. We will now look at the start of the court process for larger and more complex matters – the fast and multi-tracks.

The two procedures are very similar. The main difference is that if it is likely that the trial will last longer than one day, which is likely to be the case in more complex matters where there are many witnesses, the matter will be allocated to the multi-track.

But before we reach allocation, it is important to start the matter with a formal letter before action. The Civil Procedure Rules (CPR) set out the rules of engagement in litigation. The Pre-Action Protocols are part of the CPR, and they tell you what you are supposed to do to set out your claim to your opponent before you involve the court. Given that the court is very concerned with the costs of litigation, it does everything it can to encourage and enable the parties to resolve the matter by being clear about their cases. If you fail to follow the protocol then you run the risk of the court, even if you win absolutely, refusing to order that the other side pays your costs.

In most cases your pre-action letter will require a substantive response within 28 days. If you do not receive an adequate response, or full payment of whatever you are seeking, then you are at liberty to issue proceedings. Issuing requires a claim form and detailed particulars of claim, which set out the whole of your case. These are sent to the court with the relevant fee. Usually the court will issue the claim by stamping it with the court's seal, and then serving it on the defendant by post.

The rules allow time for delivery, and then the clock starts to tick for the defendant, who must evaluate the claim and decide whether they want to admit the claim or defend it. To allow more time to do this, the defendant can file an acknowledgement of service within 14 days of receiving the papers. This will then allow a further 14 days for the filing of a defence, and in some cases a counter-claim against the claimant. The defence must set out why you do not agree with the claim, and a counter-claim can be used to make a separate but related claim against the claimant.

If a defendant fails to do either of these things (so it does not file an acknowledgement within 14 days and then a defence within 28 days), the claimant will be entitled to request judgment in default. It is therefore very important to comply with these deadlines. If a defendant does not and judgment is entered against them it is possible to make an application for the judgment to be set aside, but you will have to provide a good reason why you did not comply, and make the application promptly.

We will look at the rest of the court process in a future newsletter.

Should you require any assistance in this or any other commercial area please refer to our 3HR Commercial Law team which can advise accordingly.

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