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United Kingdom
Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in United Kingdom.

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United Kingdom: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

The three main methods of resolving commercial disputes in the UK are litigation, arbitration and mediation. Litigation usually commences in the High Court according to the Civil Procedure Rules ("CPR"). Arbitration is governed by the Arbitration Act 1996 and the New York Convention. Both are adversarial processes. Mediation is a non-adversarial structured negotiation led by a neutral mediator with a view to agreeing a settlement. It is also not uncommon for parties to resolve a matter through negotiation either directly or through their legal representatives.

2. What are the main procedural rules governing litigation in your jurisdiction?

The CPR govern the procedural aspects of litigation. The rules are designed to ensure that cases are dealt with justly and at proportionate cost. The CPR are supplemented by practice directions ("PD") which provide practical guidance on the rules. The general scheme is that individual areas of civil procedure are governed by parts of the CPR, with almost every part being supplemented by one or more PD. The CPR and PD cover all stages of litigation, from initiating proceedings to the appeal process.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

A commercial claim should be made in the High Court if it is worth more than £100,000. The trial will be heard before one judge. If the judgment is contested, either party may seek permission to appeal to the Court of Appeal where a case will ordinarily be heard by a panel of three judges. The final court of appeal is the Supreme Court where normally five Justices hear an appeal, but it can be more in special cases (such as the decision on whether Parliamentary consent was necessary to invoke Article 50 and start the process of withdrawal from the EU, where all 11 sitting Justices heard the case).

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

The basic timetable is dictated by the CPR, but considerable discretion is left to the court to fix the deadlines for each stage of the litigation process depending upon the complexity of the case. It is not uncommon to take at least 18 months to get to trial even for a relatively straightforward commercial dispute. Other cases can take much longer. Judges treat procedural deadlines seriously and can impose sanctions on parties causing delays (these can include adverse costs orders or, in extreme cases, strike out orders). The Shorter Trials Scheme has proven popular and allows parties in the Business and Property Courts, a specialist division of the High Court that hears many commercial disputes, to get from issuing proceedings to judgment in less than a year. It is therefore worth considering this route for relatively simple claims with minimal disclosure and limited evidence. Parties should, however, factor in the time for any appeals, which can be considerable as both the Court of Appeal and Supreme Court are very busy. Alternatively, the Flexible Trials Scheme in the Business and Property Courts is designed to limit disclosure and allow for earlier trial dates, within a more standard procedural framework.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Statements of case are filed on a public register and can (in general) be searched and copied by members of the public. Hearings take place and judgments are handed down in public, other than in exceptional circumstances. The exceptional circumstances include where publicity would defeat the object of the hearing, where the hearing involves matters relating to national security, and where the hearing involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality.

6. What, if any, are the relevant limitation periods in your jurisdiction?

Limitation periods for different types of claims are set out in the Limitation Act 1980. These include a basic six-year

limitation period for claims relating to contract, tort, or breach of trust. For negligence claims, the limitation period is the later of six years from the date the damage occurred or three years from the date on which the claimant had the requisite knowledge and the right to bring the claim (with an overriding time limit of 15 years from the date of the negligent act or omission). Other limitation periods include one year for claims for defamation and twelve years for claims brought in respect of deeds. Time limits may be extended in certain circumstances (for example, where there has been fraud or deliberate concealment).

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

There are different pre-action protocols for some of the most common types of claims, such as debt claims or professional negligence claims. There is also a general PD which applies if no specific pre-action protocol applies. It ensures that the parties have exchanged sufficient information to understand each other's position, make decisions on how to proceed, attempt to settle issues without proceedings and support the efficient management of proceedings.

Compliance with the pre-action protocols is not mandatory but the court might take it into account when awarding costs or considering case management directions. It is therefore advisable to follow the relevant protocol whenever possible (although in some cases, such as when a limitation period is about to expire, it might be necessary to issue a claim and then engage in correspondence with the other side).

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are commenced when the court issues a claim form (by stamping it with the court's seal), as prepared and requested by the claimant. The claim form is the first "statement of case" and includes the name of the court in which the claimant wants the claim to be heard, the parties' names and addresses, a brief summary of the claim and a description of the remedy sought by the claimant. Once the claim form has been issued, the claimant must serve it on the defendant within four months, if the claim form is being served within the jurisdiction (or six months if service takes place outside the jurisdiction, in which case the court's permission may be required). Service can be effected by the claimant or the court (but it is advisable for a claimant to effect service itself).

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

The rules on jurisdiction have been affected by the UK's withdrawal from the EU. Broadly, for proceedings initiated on or before 31 December 2020, the courts apply the rules in the Recast Brussels Regulation, whilst for proceedings initiated after 31 December 2020, the courts apply the common law rules, or the rules set out in the Hague Convention on Choice of Court Agreements. Under the Recast Brussels Regulation, the court generally has jurisdiction where the defendant is domiciled in England or Wales (subject to *lis pendens* or the exclusive jurisdiction of other EU courts). The court also has jurisdiction where there is an exclusive jurisdiction clause in favour of England and Wales, or a close connection between the defendant or the dispute and England or Wales (for example, if the dispute concerns land in England or Wales, the contract in dispute was due to be performed in England or Wales, or the relevant tort took place in England or Wales). Under the common law rules, the court has jurisdiction if the claim form is served on the defendant whilst it is physically present in England or Wales, if the defendant submits to the jurisdiction voluntarily, or if the court gives permission for service out of the jurisdiction under one of the specific heads of jurisdiction (which broadly require showing a connection between the defendant or the dispute and England or Wales). Unlike under the Recast Brussels Regulation, the court has considerable discretion under the common law rules to refuse to exercise its jurisdiction on the basis that England and Wales is not the most appropriate forum to hear the dispute. The Hague Convention on Choice of Court Agreements applies where there is an exclusive jurisdiction agreement between the parties designating a particular court to resolve a particular dispute.

10. How does the court determine which law governs the claims in your jurisdiction?

Broadly, following the UK's withdrawal from the EU, the choice of law rules set out in the Rome I and Rome II Regulations continue to apply, as the UK has retained them in domestic legislation. The Rome I Regulation applies to contractual obligations and the Rome II

Regulation applies to non-contractual obligations. The general rule under the Rome I Regulation is that parties

are able to choose the law governing their commercial relationship. In the absence of such a choice, Rome I provides specific rules for determining the governing law for various types of contracts (for example, for sale of goods contracts the governing law is the law of the country where the seller has its habitual residence). The general rule under the Rome II Regulation is that the law applicable to non-contractual obligations is the law of the country in which the damage occurs or is likely to occur. However, the rule is subject to a few exceptions, including one providing that if the relevant tort (or delict) is "manifestly more closely connected" with another country, the law of that other country shall apply.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

The court has extensive powers of active case management, enabling it to strike out the whole or part of a statement of case which discloses no reasonable grounds, is likely to obstruct the just disposal of the proceedings, or fails to comply with the CPR, PD or court order. The court can also give summary judgment against a claimant or defendant where it determines that their claim has no real prospect of success and there is no other reason the case should go to trial. "Real prospect" is quite a low threshold in practice and has been interpreted to mean that the case is not fanciful.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The main types of interim remedies are interim injunctions, which can either require a party to do a specific act or to refrain from doing a specific act. Examples of interim injunctions include an order that a party preserves certain relevant evidence or (in more extreme cases) allows another party to take copies of that party's IT systems, and an order that "freezes" some or all of a party's assets (these so-called "freezing injunctions" are particularly effective in cases of suspected fraud, where money and other assets can be preserved until the claim is determined).

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

The claimant must submit a document called a particulars of claim, outlining its case. The document can be served with the claim form or within 14 days after the claim form has been served. Once the defendant has been served, it has 14 days to file a defence (or 28 days if it chooses to file an acknowledgement of service first). If there are further relevant points to plead, the claimant may file a reply. Following the pleadings stage, both parties must also submit directions questionnaires, which help the court decide which court or division is most appropriate to hear the case.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

All documents which are or have been in the party's control, and which harm or support its or another party's case, must be disclosed in litigation. This includes privileged documents. However, a party can withhold privileged documents from inspection by the other side; so even though the other side knows about the existence of those documents, it cannot view them. Types of privilege include privilege against self-incrimination, public interest immunity, legal advice privilege, litigation privilege and common interest privilege. In October 2022, the Business and Property Courts formally introduced their own disclosure regime (which largely mirrors the Disclosure Pilot Scheme which had been in force since 2019). This regime is designed to encourage a proportionate and bespoke approach to disclosure and, accordingly, to address the time and cost challenges often presented by large numbers of electronic documents.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witnesses can be summoned to attend court. However, the normal procedure is for each side to produce and exchange written witness statements on which they intend to rely well in advance of trial. These can be drafted by solicitors for the parties but should reflect the witnesses' own words. The witness then typically confirms this evidence in person at trial, together with giving any additional oral evidence, and then the other side is allowed to cross-examine the witness. Depositions are permitted in front of a judge, an examiner of the court or any other person the court appoints, but they are unusual. In April 2021, PD 57AC introduced new

rules for trial witness statements in the Business and Property Courts. These rules aim to reduce lengthy and "over-lawyered" witness statements and require, amongst other things, that a witness statement lists any documents that the witness has referred or been referred to when preparing it.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is permitted at the court's discretion. An expert's primary role is to assist the court on technical matters. Experts owe a duty to exercise skill and care and to comply with the CPR and relevant code of ethics. They have an overriding duty to help the court – a duty which overrides any obligation to the person instructing them or paying them. In complex cases it is not unusual for each side to instruct their own expert on one or more issues, although the court has the power to order a single expert to be instructed jointly. Experts typically exchange written reports and then seek to agree a joint statement setting out points on which they agree and disagree. They are then cross-examined separately at trial or, as part of a process called "hot tubbing", they may appear simultaneously and answer common questions from both counsel and the judge.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Permission to appeal must be given by the court before a decision can be appealed. An application for permission to appeal can be made either to the lower court at the hearing at which the decision to be appealed was made or to the appeal court. If an application is made to the appeal court, it must be requested in an "appellant's notice". This must be filed within 21 days to appeal to the Court of Appeal against a County Court or High Court decision. Appeals to the Supreme Court must be made within 28 days.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

The rules on enforcement of foreign judgments have been affected by the UK's withdrawal from the EU. Broadly, for proceedings initiated on or before 31 December 2020, the Recast Brussels Regulation governs the enforcement of judgments originating from EU Member States. Under the Recast Brussels Regulation, judgments given in one Member State are freely enforceable in another Member State, with only minor administrative steps required. For judgments given in proceedings initiated after 31 December 2020 in the EU and for other foreign judgments, enforcement is currently usually governed by common law rules. Under the common law rules, a foreign judgment is enforceable only if it is final and conclusive (and for a sum of money). In cases where jurisdiction of the foreign court was based on an exclusive choice of court agreement, the Hague Convention on Choice of Court Agreements may also be relevant to the enforcement of judgments from certain jurisdictions. Looking ahead, it is expected that the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019 will come into force in the UK in 2025 (the UK became a signatory on 12 January 2024). The Convention aims to provide a uniform framework for the recognition and enforcement of judgments between contracting states. It applies to judgments where the jurisdiction of the foreign court was based on specific grounds listed in the Convention (including a non-exclusive choice of court agreement).

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

Generally, the costs of litigation can be recovered from the other side, as the costs are awarded to "indemnify" the winning party for the cost and expenses incurred in vindicating or defending their rights. However, it is rare that the winner will be fully indemnified (a general rule of thumb is 50-70% recovery). There is a general "no profit" rule providing that the costs awarded can never exceed the solicitors' and client's costs. In determining costs, the court considers a variety of factors, including the party's conduct during trial.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

There are various procedural mechanisms which can be used to bring a "group action" in the UK: joint claims by multiple claimants; consolidation of separate claims into one set of proceedings, which can be managed together; group litigation orders ("GLOs"), where multiple individually commenced claims have common or related issues of fact or law; and representative claims, where

one representative acts on behalf of one or more persons with the same interest in the claim (but the "same interest" is interpreted very narrowly). There is also a much more liberal collective actions regime for competition law claims pursued in the Competition Appeal Tribunal ("CAT"). The CAT has a wide discretion to certify claims initiated on behalf of, for example, victims of a cartel, on an opt-out or opt-in basis, and approve collective settlements where appropriate.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

The procedures to add third parties to ongoing proceedings or to consolidate two sets of proceedings are outlined in the CPR. Court approval is generally required (although a defendant can bring a contribution / indemnity claim against a third party without permission at the time of filing the defence). To add parties to ongoing proceedings, the court must find that it is "desirable" to add the new party to resolve the matter. The test for joint claimants is that the claims can be "conveniently" disposed of in the same proceedings. For a group litigation order to be made, the issues must be common or related.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third party litigation funding is permitted. However, it must not breach the rule against "maintenance and champerty", which means that there must be no element of impropriety or corruption of justice. This is a complex and developing area. "Nuisance" claimants who "buy up" claims they have no legitimate interest in will not be permitted to proceed. Generally, litigation funders should follow the "Code of Conduct for Litigation Funders" produced by the Association of Litigation Funders. Third party funders can be made liable for costs incurred by the other side. Litigation funding is becoming increasingly common in class action disputes (including cartel damages cases and securities cases). In 2023, the Supreme Court handed down a seminal judgment on litigation funding agreements ("LFAs"). The judgment severely restricted the use of LFAs entitling litigation funders to recover a percentage of any damages awarded in the proceedings (as opposed to, for example, a fixed sum or a multiple of the funder's investment). The judgment has had significant consequences for UK litigation funders and claimant law firms (particularly in the context of competition class action proceedings in the CAT). It is expected that there will be a legislative intervention to reverse the effect of the judgment.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The COVID-19 pandemic necessitated widespread and immediate changes to the use of remote hearings in commercial litigation. The adoption of remote hearings was facilitated by provisions in the UK's emergency Coronavirus Act 2020, new PD in the CPR, and other informal guidance. Remote hearings have now become staples of the commercial litigation landscape. In the Business and Property Courts, hearings scheduled for under half a day and all application hearings scheduled on a Friday are now held remotely by default. However, whilst the courts have embraced digital dispute resolution as a further mechanism by which to ensure cases are dealt with at a proportionate cost, face-to-face hearings are still recognised as the "gold standard" (particularly for complex cases).

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

One of the main advantages of the English courts is their global reach. London's status as a global commercial centre means that defendants face a heavy price if they do not obey the court's orders, as significant commercial actors can rarely afford to be unable to come to London or have assets in the jurisdiction. This makes London a popular forum for fraud cases, where the power to compel worldwide asset preservation and disclosure is key. Costs are the main disadvantage, although London is not alone in this and parties can mitigate the high costs of litigation by having up-front conversations with their legal advisers about the economies of litigation (which may involve utilising, for example, the Shorter Trial Scheme) and potential alternatives (such as mediation or settlement).

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Class actions continue to see exponential growth. These are more established in jurisdictions such as the US, Canada, and Australia but procedures are now in place in England and Wales to make claims easier to commence

and manage and law firms and litigation funders are more adept at gathering and funding classes. There have been significant developments in the class action regime in the CAT recently, which have resulted in a significant increase in the number of competition class action proceedings.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

Disclosure review exercises are most likely to be affected. Technology assisted review has gained increased recognition and other automated techniques are being adopted by parties and, most importantly, by the court to sift through the vast quantities of available data. Also, automated processes, such as intelligent research tools and "smart" contracts have and will continue to take over some tasks previously performed by junior lawyers. This will place an even greater emphasis on lawyers to focus on the specific problems faced by their clients and to tailor their advice carefully in order to work as efficiently as possible.

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