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LITIGATION – PART 8 PROCEDURE

GUIDANCE NOTES

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OUR APPROACH

We work closely with our clients to try and resolve disputes through negotiation or mediation without the need to commence court proceedings. Our experience shows disputes involving wills and trusts are best handled sensitively with a resolution reached in private, especially given that these disputes involve family matters.

If matters do not settle, then court proceedings are the only feasible alternative. Our team specialise in these disputes and as such we are well placed to advise you on the merits, likely results at court and the costs and risks of court proceedings.

COURT PROCEEDINGS

This guide explains the procedure that is followed when court proceedings are commenced using the Part 8 procedure (the court procedure for certain types of claim that is run in accordance with Part 8 of the Civil Procedure Rules) (“CPR”). It is often referred to as the “alternative procedure” for dealing with claims as most types of claim are generally dealt with under Part 7 of the CPR.

Typically, disputes such as claims for reasonable financial provision under the Inheritance (Provision for Family and Dependents) Act 1975, and claims for the removal of executors are dealt with under the Part 8 procedure.

The court has discretion to transfer the claim to be dealt with under Part 7 CPR if there is a substantial dispute of fact between the parties. This Guidance Note explains the Part 8 procedure.

STARTING THE CLAIM

Court proceedings are started using the Part 8 claim form, in which the claimant (the person bringing the claim) sets out their details, the details of the party/ies that they are bringing a claim against (known as the defendant), details of the claim that they are bringing, and the remedy they are seeking from the court.

Under the Part 8 procedure, the claimant must file any written evidence that s/he is relying on in support of their case with the court. This is usually done in the form of a witness statement endorsed with a statement of truth. The claimant cannot rely on any evidence that was not filed with the claim form, unless s/he obtains permission from the court to do so.

A claimant can also file a document setting out brief details of the claim with a Part 8 claim form and written evidence, although it is not necessary to file formal court pleadings.

The court will “issue” the claim by entering details of the parties and claim onto the court’s database, and your claim will be given a claim number. The court will then stamp the claim form (known as “sealing”).

At this point, the claim becomes a live court claim, and the parties' liability for their opponent's legal costs arises, which can include liability for costs incurred before court proceedings were issues, during the "pre-action" stage of the dispute.

SERVING THE CLAIM

The claim is then sent to the defendant. This known as "serving" the claim. Part 6 CPR sets out the different ways that a claim can be served. If a claim is served by post, the deemed date of service is the second business day after the documents were posted, even if the documents are received before this.

When serving the claim, a number of documents are sent to the defendant:

- the claim form;
- brief details of claim (if any);
- witness statement and other evidence filed with the court;
- notes for defendant for responding to a Part 8 claim;
- Acknowledgment of service of a Part 8 claim.

RESPONDING TO THE CLAIM

The defendant must file an acknowledgment of service with the court and serve it on the other parties to the dispute within 14 days of the deemed date of service of the claim (21 days for claims under the Inheritance (Provision for Family and Dependents) Act 1975).

In that document, the defendant must state whether s/he contests the claim, or if the defendant is seeking a different remedy from the one stated in the claim form, what that remedy is. The defendant can also state whether s/he is contesting the court's jurisdiction in the acknowledgment of service.

The defendant is not required to file a defence, but must file any evidence that s/he is relying on with the acknowledgement of service. If the defendant fails to do so, s/he may attend the final hearing, but will not be able to take part in the hearing without the permission of the court.

EVIDENCE IN REPLY

The claimant can file further written evidence in reply and serve it on the other parties within 14 days of service of the defendant's evidence, although this is not compulsory.

It is common for the parties to agree extensions of time for filing and serving evidence, particularly in substantial cases, where the tight timescales may be difficult to comply with.

ALLOCATION

There are 3 tracks in litigation determined largely by the value of the claim:

- Small claims (for claims up to £10,000, and legal costs are largely irrecoverable);

- Fast Track (for claims between £10,000 - £25,000);
- Multi – Track (for claims over £25,001).

Part 8 claims are treated as being allocated to the multi-track.

DIRECTIONS

The court will always have the “overriding objective” of the CPR in mind when laying directions, in order to manage the case justly and at proportionate cost.

The court’s role is to manage the progression of the dispute through the litigation process until the final trial or hearing. To facilitate this, the court will set out a timetable of steps that the parties must take by certain dates – known as “directions”.

The court has a large degree of discretion as to how the case will be managed. It may set a date for a final hearing once all of the evidence has been filed and served, it may set some directions, or it may hold a hearing which the parties are required to attend in order to determine what directions should be made (known as a “case management conference”).

When making directions, the court will consider factors such as whether the Part 8 procedure is the appropriate track for the claim to continue along, whether oral evidence at the trial is permitted, and if so, whether it should be limited to certain issues in dispute.

The parties should try to agree directions before the case management conference takes place in order to assist the court, and the court encourages this. The court may approve agreed directions that the parties file without a hearing if it considers them appropriate.

The court may also require the parties to file costs budgets (an estimate of costs to conclusion of the dispute) in some cases, such as where they involve substantial disputes of fact, the hearing is likely to require oral evidence or extensive disclosure of documents.

THE HEARING

Some Part 8 claims will not require an oral hearing, and the court will determine the case by considering the written evidence that the parties have filed.

If a hearing does take place, the court may permit parties to give oral evidence, and may also allow the cross examination of witnesses that have filed written evidence. However, cross examination of witnesses is unlikely to be permitted on disputes of fact, and the court may take the view that the claim should not continue using the Part 8 procedure.

Following the hearing, the court may make its decision following the hearing, or it may give further case management directions.

COSTS

The general costs rules apply to the Part 8 procedure. This means that generally, the losing party will be ordered to pay the successful party’s costs, to be assessed by the court if they cannot be agreed between the parties. As a rule of thumb, a successful party can expect to recover between 66% – 75% of their legal costs from their opponent.

SUMMARY

The progress of your dispute through the litigation process is governed by the Civil Procedure Rules and the directions set by the court. It is essential that the rules and directions are complied with, as failure to do so could result in the court imposing costs sanctions or striking out your claim.

Our team is mindful of the fact that litigation is a stressful and costly process. We will advise and guide you through the litigation process, and will regularly review the position with you as your case progresses. We will also continue to discuss settlement options with you even once court proceedings are commenced, as the court will encourage the parties to try and resolve the dispute between them; and in our experience, a negotiated settlement is preferable to the parties rather than a court imposed decision.