

Trusts of Land and Appointment of Trustees Act (TOLATA) claims

ADR

Any party to the proceedings not prepared to engage in alternative dispute resolution, such as mediation could be penalised by the judge when deciding whether one party should pay all or some of the other party's legal costs.

Settlement

At any time before the trial parties can make offers (referred to as part 36 or Calderbank offers) to settle matters. There are specific rules relating to these offers.

Experts

An expert opinion can be sought to assist the parties to reach compromise. The parties can ask the court's permission to use this evidence within the court proceedings.

Disclosure

The parties have a duty to preserve evidence and must disclose all documents including electronic documents relevant to the case whether the documents support their claim or not.

Trial fee

There is another court fee to be paid before the trial.

Assessing costs

The successful party does not always recover all their legal costs. If there is no agreement the court will assess the costs and decide the exact amount payable.

TOLATA – three main types of application can be made:

1. To decide who is entitled to occupy the property;
2. To decide the nature and extent of the ownership of the property; and
3. To decide whether there should be a sale of the property.

The court does not have power to adjust the proportions in which property is held.

Pre action steps

- The claimant writes to the defendant before making a court application setting out their case.
 - The defendant should respond to that letter.
- Each party should provide copies of key documents they intend to rely on.
- The parties should try a method of alternative dispute resolution (ADR).

Application to the court

- An application is made in a claim form and accompanied by particulars of claim*.
 - There is a court fee payable.
 - The claim form is sent to the court for issuing.

*This flowchart assumes the case is not suitable for the Part 8 procedure.

The claim form is served on the defendant

Response to the claim

- The defendant has 14 days from service to file an acknowledgement of service (AOS) stating whether they admit or dispute the case.
 - If the defendant has filed an AOS, they have 28 days from service to file a defence.
 - The defendant can include a counterclaim against the claimant with the defence.

Allocation

The court provisionally allocates the matter to a 'track' and usually makes directions for the claimant and defendant to file directions questionnaires and confirm the draft directions they will be seeking in order to ensure that all the information and documents are prepared and available for a trial to take place.

TOLATA applications are usually allocated to the multitrack. If the case is on the multitrack a costs budget (referred to as Precedent H) must be completed by each party.

Costs and case management conference

The case is listed for a costs and case management conference at which a judge considers the timetable and whether they are satisfied that everything has been considered for the effective running of the case to trial. In doing so the judge resolves any disputes between the parties about what is required to decide the case.

The court also amends or approves the parties' cost budgets.

After the costs and case management conference

The order made by the judge at the CCMC will include a deadline for filing witness evidence, inspecting disclosure and getting expert reports (if required). It might also provide for there to be a further hearing prior to the trial.

Pre-trial review

If a pre-trial review is listed then the parties will file a pre-trial checklist ahead of this hearing. The document is intended to confirm which witnesses will give oral evidence and how long they think the trial will last. Sometimes the court is satisfied that such a hearing is not required.

Trial

This is the hearing where a judge reads all of the evidence submitted by the parties, hears evidence from the witnesses and then makes a decision (delivers a judgment) as to the outcome of the claim.

Costs

After deciding the claim the judge makes a decision as to who shall be responsible for the legal costs the parties have incurred. The general rule is that costs follow the outcome i.e. the unsuccessful party must pay the costs of the successful party.

TOLATA definitions

Acknowledgement of service: A document by which a claim is acknowledged by a defendant.

ADR (Alternation Dispute Resolution or non-court options): [Click for further details](#). A court can impose penalties if ADR is not considered.

Allocation of case: The court allocates the matter to a ‘track’ –

- Small claims track– claims worth less than £10,000 where a trial is not likely to exceed 1 day
- Fast track– claims worth more than £10,000 where the trial is likely to last more than 1 day
- Multi track– irrespective of value, claims are allocated to this track if they are considered to be specialist proceedings [part 49 CPR Rules] or if the claim is relevant under part 58–62 CPR

Allocation questionnaire: A questionnaire is used to help determine which track is most appropriate for the case to be allocated to.

Arbitration: A privately funded, out of court, form of dispute resolution which can provide an outcome if matters proceed on a contested basis. It is highly adaptable process where both parties work with their appointed arbitrator to manage the case. If agreement cannot be reached the arbitrator will make the decision.

Calderbank offer: An offer of settlement written ‘without prejudice save as to costs’. Its effect is that the court cannot refer to it except at the conclusion of the matter when dealing with the issue of costs. The court has complete discretion to decide what weight should be attached to it when considering what costs order to make.

Case management: The court has a duty to actively manage each case and as such this procedure may be adapted to the particular circumstances of a case (see Part 1 of CPR: Overriding Objective)

Case management conference: a short hearing to identify and understand the issues in the case and consider whether they can be narrowed before trial.

Claimant: The person making the court application/asking the court to make an order.

Claim form: the document used to start proceedings. It contains information about the case including the particulars of the claim.

Chronology: A timeline of key events to provide the judge with a brief outline and dates relevant to the proceedings.

Consent order: When the parties reach an agreement which resolves the dispute, the agreement is written up into a document (draft order) which is signed by both parties and records the agreement which has been reached. Once this consent order has been judicially approved and sealed by the court it becomes legally

binding. A Tomlin order is an order under which a court action is stayed on agreed terms. The terms are included within a schedule to the order and as such it is a form of consent order.

Costs orders: an instruction issued by the court concerning the costs of the proceedings [or a proportion of them]. For example, that one party should pay all or part of another party's costs.

Costs budget [Precedent H]: This is a form that the court requires the parties to the case to fill in detailing their costs. It is necessary to control the amount of costs recoverable by either party at the end of the proceedings.

Court bundle: Documents needed by the court to deal with a hearing regulated by PD39A CPR. Prior to each hearing, the claimant has responsibility to try to agree the contents of the bundle with the defendant and prepare a file a copy of the bundle for the court and parties. If the claimant is not legally represented, but the defendant is, it becomes the defendant's responsibility to prepare the bundle

Court fee: There is an initial court fee to be paid by the claimant upon issue of the claim and then further hearing fees also payable by the claimant (unless a matter proceeds on a counter claim alone in which case the hearing fees are payable by the defendant). The court fees vary depending upon the value of the claim.

Civil procedure rules: These rules are a procedural code to enable the courts to deal with civil claims justly.

Defence and counter claim: The defence is the evidence that the defendant will rely on to rebut the claimant's case. A counter claim is filed when a defendant states that he has claims of his own to make against the claimant.

Defendant: The person or people receiving the court application.

Directions: The steps which must be taken and complied with to move a case forward. It may include the disclosure, expert evidence, preparation of witness statements and timescales for these actions to be complied with.

Expert advice: May include valuations of property, tax issues.

Final hearing or trial: The hearing at which the court imposes a final decision on the parties.

Disclosure: Disclosure of documents relating to the case is governed by part 31, PD31A and PD32A CPR. Each party must complete a standard disclosure form including a list setting out all of the documents which:

- they rely upon
- adversely affect their case
- adversely affect another party's case
- support another party's case
- which they are required to disclose by a relevant practice direction

The other party can then make a request to inspect any of the documents that they wish to. Documents containing confidential communications between a legal professional and client are 'privileged' which means that they are protected and do not need to be provided for inspection.

Mediation: A confidential and impartial family law process. Together with your chosen mediator, the parties set the pace and agree topics for discussion and frequency of meetings. The mediator helps facilitate a supported conversation, it is not about relationship counselling, but helps the parties to try to reach an agreement in respect of finances.

Part 7 claim: The part 7 procedure is used where there is a dispute as to the facts of the case.

Part 8 claim: The part 8 procedure is used for claims where the court's decision is on a question where there is unlikely to be a substantial dispute of fact.

Part 36 offer: An offer of settlement to try to avoid the matter going to a trial. They must be submitted accordance with the rules set out in Part 36 CPR. The main rules are that they must be in writing and remain open for a period of 21 days or more.

Pre-action letter: This is a letter warning the other party that proceedings will be issued unless matters can be resolved PD Pre- Action Conduct and Protocols [para 6]. The claimant must set out in a letter the nature of the dispute and what they will be asking the court to do to resolve matters. It should also set out the background to the matter and legal arguments which the claimant will rely on.

Pre action protocol: Pre action protocols explain the conduct and steps that the court would normally expect parties to take before commencing proceedings. They are found in PD Pre- Action Conduct and Protocols [para 18].

Pre trial checklist – a form which the parties must complete [usually following the expiry of the date upon which the last of the directions should have been complied with]. It deals with compliance, witness and expert details, legal representation details and also the timeframe of the trial.

Service of proceedings: Service of documents is dealt with by Part 6 CPR. The claim form is usually served by the court. The court will send to the claimant a notice which will include the date on which the claim form is deemed served.

TOLATA or TLATA: Trusts of Land and Appointment of Trustees Act 1996 – the main body of law which provides within the guiding principles the court applies when deciding how matters should be dealt with. Under TOLATA the courts powers are quite narrow – it can order the sale of a property, declare the parties beneficial shares in the property and make orders by way of an account/ compensatory orders. The jurisdiction is subjective and declaratory and focuses on what the parties intentions were.

Tracks: see **allocation** above.