

What to expect at a trial

A trial marks the final determination of a dispute. If the parties have been unable to amicably resolve their dispute, the matter will be determined before a judge at a trial. Trials can often be one of the most nerve-wracking parts of the litigation process, as they often represent the culmination of many months (or years) of hard work. Unless a party is able to appeal the judgment of the judge, trials usually bring some finality to the dispute between the parties.

It is therefore very important that the parties prepare thoroughly and put themselves in the best position possible to succeed in either bringing or defending a claim.

PRIOR TO THE TRIAL

The parties or their solicitors will have previously attended a pre-trial review or will have agreed between them and the Court a timetable for the trial. This will include how long the trial is likely to last, how many witnesses each party will be calling, and usually the order in which those witnesses will be called. They will also have an idea of how long each party will need to present their case and to cross examine their opponent's witnesses.

The parties will have also agreed a bundle of documents, known as a trial bundle, in advance of the trial. This will contain the key documents, such as the statements of case, witness statements and other relevant documents, which the solicitors or barristers for each party may wish to rely on during the trial and refer to the judge. The bundle will have an index and will be paginated, so that documents can be easily referred to. Copies of the bundle will have also been provided to the Court prior to the trial, so that the judge is able to carry out any pre-reading, but also so that there is an additional copy that can be used for referring to documents if witnesses who give oral evidence at the trial itself.

WHO CAN OR DOES ATTEND A TRIAL

The main personnel at a trial are as follows:

- Judge
- Judges' clerk or usher
- The parties
- Witnesses
- Solicitor
- Counsel (barrister)
- The public

JUDGE

The trial will be presided over by a judge. In the County Court, this will usually be a District Judge or Deputy District Judge. In the High Court, it will usually be a High Court Judge. The judge's role is to listen and consider to all the evidence, review and consider the documents within the Court bundle, and to listen to the oral arguments put forward on behalf of each of the parties. At the end of the trial, the judge will deliver their judgment and will decide who has won and who has lost the case. He or she will also usually make a determination about costs and which party should be liable for the costs of the trial.

In civil cases, save for defamation claims, there is no jury, so the decision as to who has won the case lies with the judge alone. Their decision will be based on the legal and evidential arguments put forward by both parties and so the judge should be treated with respect.

Unless a claim is assigned to a particular judge (which is more common in the High Court), parties do not normally find out who their judge will be until shortly before the trial itself.

JUDGE'S CLERK OR USHER

The judge will usually be assisted in Court by a clerk or usher, who will assist the judge during the course of the trial by passing them papers or dealing with any other administrative tasks.

THE PARTIES

It is usual for both the Claimant and Defendant to attend the trial. If either of the parties are corporate parties, then a senior representative from that organisation will usually be in attendance. It is also fairly common for the Claimant or Defendant (or both) to be witnesses during the course of the trial.

WITNESSES

As well as the parties, there may be other witnesses who are called to give evidence, having already provided a witness statement. Anyone who has provided a written witness statement should attend the trial, so they can be questioned on the contents of their statement by all of the parties, and also by the judge.

SOLICITOR

If a party is legally represented, then it is common for their solicitor to be in attendance. Sometimes, solicitors will present their client's case to the judge, especially if it is straightforward or a low value claim. However, it is more common for one party or both parties to be represented by barristers, who are also known as counsel.

Solicitors will also attend the trial, so that they can advise their client of what is happening, deal with any other administrative tasks and assist counsel with any questions they may have.

BARRISTERS (COUNSEL)

As stated above, it is fairly common (especially in fast track and multi-track cases) for the parties to be represented by barristers (or counsel) at the trial itself.

Barristers will usually have been involved in the case prior to the trial itself, although solicitors will still provide barristers with a 'brief' for trial, setting out the key documents and main issues in relation to the dispute, which will enable the barrister to prepare for the trial itself.

At the trial the barrister will present their client's case to the judge and will put questions to the witnesses, both by way of examination in chief and cross-examination (see further below). The barrister will also provide the Court with opening and closing submissions, and will be on hand to assist the judge with any questions about a party's case and any questions of law the judge may need clarifying.

THE PUBLIC

Most hearings are in public. As such, it is not uncommon for people unassociated with the parties to be in attendance, usually sat at the back of the Courtroom.

This may also include legal reporters, particularly if the case is of local or legal significance. Reporters may ask the Court clerk for copies of the statement of case, which are public documents, so they have a better idea of what the claim is about.

WHAT HAPPENS AT THE TRIAL?

A Court day usually lasts from 10.30am until 4/4.30pm with an hour's break (around 1pm for lunch). Some cases begin at 10am if the Court directs or has other business to attend to.

Typically, the Claimant sits on the left of the Courtroom as you go in, and the Defendant to the

right (the judges' left). Depending on the set up of the Courtroom, a barrister would sit closest to the judge with the solicitor the row behind and the client a further row back. Any witnesses should sit at the back of the Court until they are called.

As mentioned above, the parties will have usually agreed a timetable of how the trial will take place. Subject to any other agreement however, a trial will normally proceed as per the below:

- Judge's reading time

Depending on the nature and complexity of the case, the judge may request some time to read through some of the trial bundle, so they have a better understanding of the issues involved in the case. If the claim is however straightforward, it may be possible for the judge to read the papers on the morning before the trial starts.

- Claimant's opening submissions

Counsel for the Claimant will normally set out the basis for the claim in an opening submission. Depending on how straightforward the dispute is and how much time is available for the trial, this could be a relatively short presentation or a much longer one. The judge should have carried out some pre-reading (although this is not always the case), so they may have questions for counsel, which counsel will then be able to answer to assist the judge.

- Defendant's opening submissions

Like the Claimant, the barrister for the Defendant will then make an opening submission, setting out the position of the Defendant in relation to the claim advanced by the Claimant.

In more complex cases, the judge may ask the parties' barristers to submit writing opening submissions as well as (or instead of) oral submissions.

CLAIMANT'S WITNESS EVIDENCE

The Claimant will then call witnesses upon which they wish to rely to help them prove their claim. The witness will have usually provided a witness statement in advance, so the Claimant's barrister will simply ask them to confirm the contents of that witness statement, rather than ask any specific questions on the statement. This is known as 'examination in chief'. If the witness wants to highlight any changes or errors in their statement, this should be raised at this time.

The Defendant's barrister will then get an opportunity to cross-examine the Claimant's witness on their statement. The judge will also be able to ask any questions upon which they require clarification.

If the Claimant's barrister wishes to clarify any issue that has arisen during the course of cross-examination, then they may ask the witness some further questions. This is known as re-examination.

Once the Claimant's barrister has finished their questions, the witness is discharged and the next witness called. This process is repeated for all of the Claimant's witnesses. It is a matter for the parties to decide in which order they wish to call their witnesses.

DEFENDANT'S WITNESS EVIDENCE

Once all the Claimant's witnesses have been called, it is then time for the Defendant to call their own witnesses. The approach taken is similar to the Claimant's witnesses, in that the Defendant's witnesses evidence is entered 'in chief' before the Claimant's barrister gets an opportunity to cross-examine the Defendant's witnesses, and any final re-examination can take place.

EXPERT EVIDENCE

Once all the parties' witnesses have been called and questioned, if there is any expert evidence to be given to the Court, it usually takes place at this time. The parties will either have their own expert or will have agreed a joint expert. Again, the Claimant's expert will go first, followed by the Defendant's expert, and each side will have an opportunity to question the other side's expert about their findings.

DEFENDANT'S CLOSING SUBMISSIONS

The barrister for the Defendant will then present their closing submissions based on the documents and the evidence (both written and oral) from the witnesses.

CLAIMANT'S CLOSING SUBMISSION

The Claimant's barrister will then present their closing submissions in a similar way to the Defendant's barrister.

JUDGMENT

Depending on the nature and complexity of the case, the judge will either hand down their judgement immediately after the closing submissions or will 'reserve' their judgment until another day, to give them more time to consider the arguments that have been raised. The parties' barristers will usually be instructed to draw up a form of order which will be approved by the judge and then sealed by the Court. This is then usually sent to the parties (or their legal representatives) shortly after the trial. The

judgment will usually set out details of any monies which one party may have to pay to the other and the timeframe for payment. It may also deal with the subject of legal costs.

COSTS

Depending on the time available, the judge will then also deal with the question of costs. The usual rule is that the successful party gets their legal costs paid for by the unsuccessful party. The judge may decide to assess how much of the successful party's costs they should recover at the trial itself, known as a 'Summary Assessment'. In more complicated or higher value cases, the judge will usually decide that the amount of costs needs to be determined at a separate hearing, known as a 'detailed assessment'. If this occurs, the parties can seek to agree the level of costs amongst themselves as detailed assessment proceedings can take a while to resolve, and will involve further legal costs in themselves.

APPEAL

A party usually only has 21 days to appeal the Court's decision. The unsuccessful party's barrister may request permission to appeal as soon as judgment has been handed down or may decide to wait, so that they can closely examine the judge's reasoning before determining whether an appeal is appropriate.

GET IN TOUCH



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The lawyers have incomparable client service skills. They are very clear and always make sure they understand the picture, even if it is a complicated one.

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