GAR KNOW HOW LITIGATION

United Kingdom

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JUNE 2021

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Overview

1 Describe the general organisation of the court system for civil litigation.

Civil proceedings in England and Wales are commenced either in the County Court (which generally deals with monetary claims with a value of up to £100,000 and personal injury claims with a value of under £50,000) or the High Court (which deals with more complex, high-value cases and is split into three divisions, each of which contain a number of specialist courts).

Civil cases are typically heard by a single judge at first instance. Subject to very limited exceptions, juries are not used in civil cases.

Appeals from the High Court will generally be heard by the Court of Appeal, with further appeals being made to the Supreme Court (which replaced the House of Lords as the highest appeal court following the Constitutional Reform Act 2005). The Judicial Committee of the Privy Council is the highest court of appeal for Commonwealth countries, UK overseas territories, Crown dependencies and military sovereign bases.

The doctrine of precedent binds lower courts to the decisions of higher courts.

There is a separation of powers in the UK between the Judiciary, the Legislature and the Executive. The appointment of judges is the responsibility of the independent Judicial Appointments Commission.

2 Give an overview of basic procedural principles that govern civil litigation in your jurisdiction.

The procedural law applying to English civil proceedings is contained in the Civil Procedure Rules 1998 (CPR). The CPR are divided into parts, most of which are supplemented by Practice Directions.

One of the most important rules governing civil litigation in England and Wales is found in CPR 1, which provides that the 'overriding objective' of the CPR is to enable the court to 'deal with cases justly and at proportionate cost'. The parties are required to help the court to further the overriding objective.

3 Describe the general organisation of the legal profession.

The legal profession in England and Wales is split between solicitors and barristers. Solicitors are regulated by the Solicitors Regulation Authority. Barristers are members of the Bar Council of England and Wales and are regulated by the Bar Standards Board. Barristers have unlimited rights of audience in any court or tribunal, whereas solicitors have more limited rights of audience unless they have advocacy qualifications.

Foreign lawyers can qualify as a solicitor under the Qualified Lawyers Transfer Scheme.

4 Give a brief overview of the political and social background as it relates to civil litigation.

England and Wales has a well-established global reputation for the quality of its courts, judges and legal industry, as well as for certainty and efficiency in civil disputes.

The Civil Procedure Rules and supplementary Practice Directions are continually reviewed and updated. For example, the Disclosure Pilot Scheme currently in operation in the Business and Property Courts promotes a cultural shift towards a narrower and more proportionate approach to the disclosure process.

US-style class actions are not permitted in England and Wales, although there are certain procedures that allow for collective litigation.

Jurisdiction

5 What are the sources of law and rules governing international jurisdiction in civil matters?

Following the UK's withdrawal from the EU, jurisdiction is now generally determined by reference to the English common law rules, the Hague Convention on Choice of Court Agreements 2005, or other bilateral treaties and conventions.

The UK applied to join the Lugano Convention 2007 in April 2020 but, at the time of writing, it remains to be seen whether this will be approved by the other convention parties.

6 What are the criteria for determining the jurisdiction and venue of the competent court for a civil matter?

Jurisdiction in proceedings commenced on or after 1 January 2021 will be determined by the Hague Convention (which applies where there is an exclusive choice of court agreement designating the courts of the UK, an EU member state, Mexico, Singapore or Montenegro unless an exception applies) or the English common law rules.

Under the common law, the jurisdiction of the English courts is based on either service on the defendant (which may need the permission of the court where the defendant is to be served outside of the jurisdiction) or where the defendant submits to the jurisdiction. The court's jurisdiction may be challenged (for example, on the grounds that there is another more appropriate forum or by virtue of a foreign jurisdiction or arbitration clause).

The UK has applied to become a party to the Lugano convention, which would largely replicate the system that applied before the UK exited the EU but, at the time of writing, it remains to be seen whether this will be approved by the other convention parties.

7 Does your jurisdiction commonly attract disputes that have a nexus with other jurisdictions?

International parties often choose to litigate through the English courts. The English courts, and particularly the Commercial Court, regularly hear large claims that are international in nature.

8 How will a court treat a request to hear a dispute that is already pending before another forum?

Where proceedings are pending in another jurisdiction, the English court may stay the proceedings. The English court will determine whether England is the most appropriate jurisdiction by reference to matters such as the connection it has to the dispute, the parties, and the parties' choice of jurisdiction. However, if the Hague Convention 2005 applies, the English court will suspend the proceedings pending the outcome of those specified in an exclusive jurisdiction clause.

9 How will the courts treat a dispute that is, or could be, subject to an arbitration clause or an agreement to arbitrate, including in interim proceedings?

Where English court proceedings are commenced in breach of an arbitration clause or arbitration agreement, a party to the arbitration agreement can apply to the court under section 9 of the Arbitration Act 1996 for the proceedings to be stayed. Provided that the arbitration agreement is not null, void, inoperative or incapable of being performed, the court will generally stay the proceedings in favour of arbitration.

Where foreign court proceedings are commenced in breach of an arbitration clause or arbitration agreement, the English courts can grant an anti-suit injunction.

10 May courts in your country review arbitral awards on jurisdiction?

English law allows arbitration awards to be appealed to the English courts under the Arbitration Act 1996 in limited circumstances: for lack of substantive jurisdiction, for serious irregularity, and on a point of law. Any appeal must be made within 28 days of the date of the arbitration award.

11 Are anti-suit injunctions available?

Yes. The High Court has jurisdiction to grant injunctions, including anti-suit injunctions, under section 37 of the Senior Courts Act 1981 where it is 'just and convenient' to do so.

12 Which entities are immune from being sued in your jurisdiction? In what circumstances? In what circumstances can creditors enforce a court judgment or arbitral award against a sovereign or a state entity?

Under the State Immunity Act 1978, a foreign state is immune from the jurisdiction of the English courts unless an exception applies (eg, where the state submits to the jurisdiction, the proceedings relate to a commercial transaction entered into by the state, the proceedings relate to a contractual obligation of the state that falls to be performed wholly or partly in the jurisdiction or the state has agreed to submit the dispute to arbitration). If a state loses its immunity from adjudication, it does not necessarily lose its immunity from enforcement of any judgment or arbitral award against it.

Crown immunity and the Crown Proceedings Act 1947 govern the immunity of the Crown and the UK's state organs.

Procedure

13 How are proceedings commenced? To what extent will a court actively lead the proceedings and to what extent will the court rely on the parties to further the proceedings?

A claimant commences proceedings before the English courts by filing a claim form and paying the court fee. The court will then issue the claim form by stamping it with the court seal and giving the proceedings a claim number. The claimant must then arrange for the claim form to be served on the defendant within four months of issue (or within six months if it is to be served out of the jurisdiction).

The English court has a general duty to manage cases, including "fixing timetables or otherwise controlling the progress of the case" (CPR 1.4(2)(g)). In accordance with the overriding objective, the court will encourage the parties to cooperate with each other in the conduct of the proceedings.

14 What are the requirements for filing a claim? What is the pleading standard?

A claim is commenced before the English courts by filing a claim form. The claim form must provide full details of the parties and also include a brief summary of the nature of the claim, the remedy and the amount claimed. The claimant must also file and serve particulars of claim, which set out the facts of the claim in more detail and state the remedies sought. The particulars of claim must either be contained in or served with the claim form, or be served separately within 14 days afterwards. The particulars of claim should be as concise as possible, but the claimant must state all the facts necessary to prove the relevant cause of action against the defendant, and must also give the defendant sufficient information about the facts alleged to enable them to understand the case against them.

15 What are the requirements for answering claims? What is the pleading standard?

Within 14 days after service of the particulars of claim, the defendant to proceedings before the English courts must either file a defence or an acknowledgment of service (in which case the defendant will have a further 14 days in which to file a defence). The defendant must also file an acknowledgment of service if it wishes to dispute the court's jurisdiction. If the defendant fails to file a defence within time, the claimant can apply for 'default judgment'.

The defence must be as concise as possible but must set out the allegations the defendant denies, those it admits, and those it is unable to admit or deny and requires the claimant to prove. Where the defendant denies an allegation, it must state its reasons for doing so and must also state its own version of the facts (if it disagrees with those contained in the particulars of claim). A defendant who fails to deal with an allegation made in the particulars of claim is deemed to admit that allegation.

16 What are the rules regarding further briefs and submissions?

The claimant in English proceedings can (but is not obliged to) respond to the matters contained in the defence by way of a reply. If the reply does not deal with a matter in the defence, it does not mean the claimant has admitted the point.

Any further statements of case need the permission of the court.

If a party wishes to raise a new and distinct claim, or discovers that it has omitted an important issue, or wishes to add or substitute a party, it will need to amend its statement of case (which may require the court's permission).

17 To what degree are civil proceedings made public?

The general position is that there are no reporting restrictions in relation to English civil proceedings, with hearings usually taking place in public, and with some judgments being live streamed (eg, in the Supreme Court). The court may, however, order that a hearing or part of a hearing be held in private; this generally occurs where the court considers it necessary in the interests of justice.

Statements of case are generally available to the public, although the court can limit public access. Copies of judgments and orders are also generally available to non-parties without the permission of the court, and other documents are available with the court's permission.

Pretrial settlement and ADR

18 Will a court render (interim) assessments about any factual or legal issues in dispute? What role and approach do courts typically take regarding settlement? Are there mandatory settlement conferences between the parties at the outset of or during the litigation?

Parties to litigation before the English courts can apply to the court for the determination of a preliminary issue (either a point of law or a question of fact) at any time.

The court will encourage parties to settle the whole or part of the case, and the parties are under an obligation to consider the possibility of settlement at all times. However, as a general rule, the court does not impose mandatory settlement conferences.

19 Is referral to mediation or another form of ADR an option, or even mandatory, before or during the litigation?

Referral to mediation or another form of ADR is an option available to the parties both before and during litigation but is not mandatory in England and Wales. There may be costs consequences for a party if it unreasonably refuses an offer to mediate or fails to respond to a mediation request at all. Further, courts are supportive of the use of mediation or other forms of ADR and may be willing to grant a short stay of proceedings to allow parties time to participate in ADR.

Interim relief

20 What are the forms of emergency or interim relief?

The most common form of emergency relief in England and Wales is an injunction. This is an order of the court that requires a party to do, or to refrain from doing, a particular act. The court can grant a wide range of different types of injunctive orders, but the most common orders include freezing orders, search orders and anti-suit injunctions.

It is also possible to seek other forms of interim relief such as security for costs or disclosure orders (known as Norwich Pharmacal orders) requiring third parties to provide information or documents.

21 What must a petitioner show to obtain interim relief?

The general rule is that an injunction will be granted where it appears to be "just and convenient" to do so (section 37 of the Senior Courts Act 1981). Injunctions are discretionary and the court will consider the precise facts of each case and will seek to maintain a fair balance between the parties pending the trial. The test that has been established by the courts in determining whether or not to grant an injunction is first to consider whether there is a "serious question to be tried" and, if so, whether the "balance of convenience" is in favour of granting an injunction.

A party seeking an injunction will usually be required to give an undertaking to compensate the respondent for any loss if it is later held that the interim injunction was wrongly granted (known as a cross-undertaking in damages).

Decisions

22 What types of decisions (other than interim relief) may a court render in civil matters?

The English court may make a number of interim, directional or procedural decisions before it reaches its final decision on a claim. These may include case management directions, orders dealing with preliminary issues and costs orders.

The final decision of the court is handed down in a judgment. An order will usually accompany the judgment, setting out what the parties must do (or not do) as a result of the court's findings. A wide range of common law and equitable remedies are available to the court including damages, declarations, injunctive relief and specific performance.

23 At what stage of the proceedings may a court render a decision? Are motions to dismiss and summary judgment available?

In England and Wales, the court typically reaches its final decision on a claim once a trial has taken place.

Summary judgment is available, and allows the court to dispose of a claim (or a particular issue) without a trial if the applicant can show that the other party has no real prospect of success and there is no other compelling reason why the case or issue should go to trial. The court also has the power to strike out a party's statement of case in full or in part.

24 Under which circumstances will a default judgment be rendered?

Default judgment may be entered against a defendant who fails to file an acknowledgment of service or a defence within the prescribed time.

To obtain default judgment, the claimant must show that: (i) the particulars of claim have been served; (ii) time has expired for filing a defence or an acknowledgment of service; (iii) the defendant has not admitted or satisfied the claim; and (iv) no application for summary judgment or strike out has been made.

25 How long does it typically take a court of first instance to render a decision?

The judge may decide to give judgment immediately or, in more complex cases, may 'reserve' judgment (meaning it will follow after the end of the trial or hearing). In very complex cases, it may be several months before a judgment is handed down.

Parties

26 How can third parties become involved in proceedings?

Third parties can be joined to existing English civil proceedings either by the court, on the application of a party, or on the application of a third party who wishes to join the proceedings.

A defendant can bring an 'additional claim' against a person who is not already party to the proceedings, either as a counterclaim against the third party or a claim for a contribution, indemnity, or any other remedy.

Failure to join a particular party to proceedings does not necessarily preclude a litigant from later bringing a subsequent claim against that party.

Fact-Finding and Evidence

27 Describe the rules of fact-finding in your jurisdiction.

The facts in issue in a case must be proved by admissible relevant evidence. There are rules that exclude or restrict the use of certain types of evidence, including hearsay evidence, opinion evidence and matters that are subject to legal privilege.

Documentary evidence is provided by way of disclosure from one party to another. In relation to witness evidence, the parties will generally exchange witness statements instead of oral evidence and those witnesses will then be cross-examined on that evidence at trial. Experts may also be called to give evidence at trial.

28 Will a court take or initiate the taking of evidence or will it rely on the parties to request the taking of evidence and to present it?

The English court relies on the parties to prepare and present the evidence in the case. However, as part of its general case management powers, the court will control the evidence before it – for example, under CPR 32, the court can give directions about: (i) the issues on which it requires evidence; (ii) the nature of the evidence that it requires to decide those issues; and (iii) the way in which the evidence is to be placed before it. The court can exclude evidence that would otherwise be admissible and may also limit cross-examination.

29 Is an opponent obliged to produce evidence that is harmful to it in the proceedings? Is there a document disclosure procedure in place? What are the consequences if evidence is not produced by a party?

Once English court proceedings are contemplated, parties are under an obligation to preserve documents that are relevant to the matters in dispute in the proceedings (including documents which adversely affect that party's case).

Traditionally the most common order in English litigation was an order for "standard disclosure", which requires the disclosure of documents: (i) on which a party relies; (ii) that adversely affect a party's own case or another party's case; and/or (iii) that support another party's case. However, since 1 January 2019, a Disclosure Pilot Scheme (DPS) is in operation in the Business and Property Courts (with certain exceptions) and is due to run until 31 December 2021. The DPS has narrowed the scope of disclosure and the process around it. The disclosure that is ordered depends on what is most appropriate to the issues in the case (ranging from wide-ranging search-based disclosure to no disclosure other than adverse documents that support the other party's case).

Sanctions apply for failing to give proper disclosure, which can lead to restrictions on documents being used and also costs penalties.

30 Please describe the key characteristics of witness evidence in your jurisdiction. Is witness preparation allowed?

As part of the process of proving a claim, most parties will adduce written witness evidence from those with first-hand knowledge of the facts in the form of a written witness statement to support the claims being made. Witnesses are then cross-examined orally on that evidence at trial.

Coaching a witness on their evidence is not permitted in England and Wales. However, preparing a witness to give oral testimony in court (also known as witness familiarisation) is permitted.

31 Who appoints expert witnesses? What is the role of experts?

The role of an expert is to assist the court in reaching its decision by providing their independent views on (typically) very technical issues with which the court may be unfamiliar. Expert evidence can only be adduced where the court has made an order permitting a party to rely on an expert witness.

While the court may elect to appoint an expert witness, almost all appointments are made by the parties themselves. In some cases (for example in low-value cases or cases where the evidence required is not the central issue or is relatively uncontroversial) the parties may seek to appoint a joint single expert. However, in most high-value cases, parties tend to appoint their own experts.

32 Can parties to proceedings (or a partys directors and officers in the case of a legal person) act as witnesses? Can the court draw negative inferences from a partys failure to testify or act as a witness?

Parties to English proceedings, or a party's directors or officers in the case of a legal person, may act as witnesses. The general rule is that the evidence should only be given by witnesses who have first-hand knowledge of the events in question and it is therefore very common for parties to give evidence.

If a party who might be expected to have material evidence to give on a particular issue chooses not to testify or act as a witness, the court may draw adverse inferences (taking into account all the circumstances including the reason for the witness' absence).

33 How is foreign law or foreign-language documentation introduced into the proceedings and considered by the courts?

Where any principle of foreign law is relied upon in support of a party's case it must be set out in the particulars of claim and proved as a matter of fact. Parties usually rely on expert evidence to prove their analysis of the foreign law.

Parties can disclose foreign language documents and there is generally no obligation to translate those documents into English before disclosing them unless they are to be produced in court.

34 What standard of proof applies in civil litigation? Are there different standards for different issues?

As a general rule, the standard of proof in English civil litigation is on the "balance of probabilities". This means that the court must be satisfied, on the evidence before it, that the occurrence of an event was more likely than not. There are, however, different standards of proof for particular issues.

Appeals

35 What are the possibilities to appeal a judicial decision? How many levels of appeal are there?

A party wishing to appeal an English court judgment will require permission to do so (either from the first instance judge or from the appellate court). There are generally two levels of appeal. In High Court proceedings, the appellate court is the Court of Appeal. Appeals from the Court of Appeal are heard by the Supreme Court. Lower value claims heard in the County Courts have a different appeal destination depending on the level of judge that heard the proceedings.

36 What aspects of a lower court's decisions will an appeals court review and by what standards?

An appeal will usually be a review of the lower court's decision. Save for very limited circumstances, it will not be a re-hearing of the first-instance proceedings.

The appellate court will allow an appeal if the decision of the lower court was wrong (ie, there was an error of law, error of fact or an error in the exercise of the lower court's discretion). In practice, the majority of appeals are commenced on the basis of an error of law.

37 How long does it usually take to obtain an appellate decision?

The time varies, although appeals are usually heard within about 12-18 months of the judgment.

Special proceedings

38 Are class actions available?

The mechanisms by which collective actions can be brought in the English courts include: (i) multiple joint claimants using a single claim form; (ii) multiple claims managed by the court under a Group Litigation Order; (iii) representative actions; and (iv) derivative claims. All operate on an "opt-in" basis (the only "opt out" mechanism in England is collective actions for damages for infringement of competition law that are brought in the Competition Appeal Tribunal).

39 Are derivative actions available?

Derivative actions allow a shareholder, or group of shareholders, to make a claim in respect of a cause of action vested in the company arising from the acts or omissions of one or more of the company's directors.

There is a two-stage court process for bringing a derivative claim. The first stage is to seek permission of the court. The court must refuse permission for a derivative claim if either (i) the court action would not promote the success of the company or (ii) the company has authorised or ratified the relevant act. If the court does not refuse the claim at the first stage, a full trial will then take place.

In addition to derivative actions, unfair prejudice claims allow a shareholder to apply to the court for an order that the company's affairs are being, have been or will be managed in a manner that is unfairly prejudicial to the members in general or that member, or group of members, specifically.

40 Are fast-track proceedings available?

A Part 8 claim can be used if a claimant seeks the court's determination on a question which is unlikely to involve a substantial dispute of fact, or if the civil procedural rules so direct. A claim form must be filed with any evidence on which the claimant seeks to rely. The defendant must file and serve their evidence when filing their acknowledgement of service.

The Shorter Trials Scheme (STS) in the Business and Property Courts enables trials of certain claims to take place within eight months of the case management conference (so within about 10-12 months of issuing the proceedings).

A claim can also be allocated to the fast track procedure, which is designed for less complex cases and for claims worth between £10,000 and £25,000, where the trial is likely to last for no more than one day and where oral expert evidence at trial will be limited.

41 Is it possible to conduct proceedings in a foreign language?

Civil proceedings in England and Wales are conducted in English. Separate arrangements are available for civil proceedings to be conducted in Welsh in specific circumstances.

Both witnesses of fact and expert witnesses can give their evidence and be cross-examined in their native language during a hearing, with the assistance of interpreters. Any documents not in English must be accompanied with an English translation.

Role of Domestic Courts In Arbitration Matters

42 In which conditions does your domestic arbitration law apply? Does it apply equally to purely domestic and international arbitrations, and to commercial and investor-state arbitrations?

The Arbitration Act 1996 (the Act) is the primary source of domestic arbitration law. The Act applies to arbitrations (both domestic and international) seated in England, Wales or Northern Ireland. There are also certain circumstances in which the Act may apply to arbitrations outside these jurisdictions, or where no seat has been designated or determined.

"Mandatory provisions" of the Act have effect notwithstanding any agreement to the contrary. "Non-mandatory provisions" of the Act apply in the absence of the parties agreeing their own arrangements.

43 Give an overview of instances in which state courts come into play in domestic and international arbitration proceedings.

Limited court intervention is one of the three basic principles set out in the Act. The English courts are only permitted to intervene in arbitration proceedings to the extent expressly permitted by the Act. The role of the courts is supportive rather than supervisory – for example, removal of an arbitrator, ordering attendance of witnesses before the tribunal or to make an order requiring a party to comply with a tribunal's peremptory order.

44 Describe the rules governing recognition and enforcement of arbitral awards in your jurisdiction. To what extent do domestic courts review arbitral awards on the substance?

The UK is a party to the New York Convention 1958 and therefore a party can apply to enforce an arbitral award "in the same manner as a judgment or order of the court". The usual approach is for the English court to make an order in the terms of the award; enforcement then takes place using any of the methods available to enforce an English court judgment.

There are very limited situations in which a party can challenge or appeal an arbitration award in the English courts.

Effects of judgment and enforcement

45 What legal effects does a judgment have?

A judgment or order takes effect from the day when it is given or made (unless the court orders otherwise). A party must generally comply with a judgment or order for the payment of an amount of money (including costs) within 14 days of the date of the judgment or order, unless the court orders otherwise.

The finality of judgments is preserved under the doctrine of 'res judicata'. Once a judgment is given, the same cause of action or decided issues may not be re-litigated by the parties (subject to any appeal).

46 What are the procedures and options for enforcing a domestic judgment?

Enforcement options include: (i) a third party debt order, by which sums owed to a judgment debtor by a third party are seized for the benefit of the judgment creditor; (ii) a charging order granting a charge in favour of the judgment creditor over assets owned by the judgment debtor; (iii) taking control of goods belonging to the judgment debtor, which requires a writ or warrant of control and is executed by a High Court enforcement officer (a bailiff); and (iv) obtaining an attachment of earnings order under which the judgment debtor's earnings are deducted by their employer and paid to the judgment creditor.

If a judgment debtor does not pay the amount owed pursuant to a money judgment, it is also possible to pursue insolvency measures as a means to recover the judgment debt.

47 Under what circumstances will a foreign judgment be enforced in your jurisdiction?

The process is twofold and involves recognition and enforcement, depending on the jurisdiction in which the judgment was given.

Judgments from an EU member state or Iceland, Norway and Switzerland dated before the end of the Brexit transition period (31 December 2020) will continue to be recognised as a result of the Recast Brussels Regulation and the Lugano Convention.

The Hague Convention enables enforcement of judgments from a court that had jurisdiction pursuant to an exclusive jurisdiction clause.

Judgments from Commonwealth and certain other countries can be recognised in accordance with a statutory regime (pursuant to the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933).

For all other judgments, the "common law" regime applies under which the judgment must be final and conclusive in the court that made the judgment, must be for a sum of money (but not for taxes, fines or other penalties) and the judgment must be made on the merits (eg, not a default judgment). The English court will not generally enforce a judgment if the foreign court procedures breached the rules of natural justice, or where the judgment was obtained by fraud or contrary to English public policy or the European Convention on Human Rights.

Specific rules apply to judgments in insolvency proceedings and to judgments relating to property.

Costs and Funding

48 Will the successful partys costs be borne by the opponent?

As a general rule, the unsuccessful party will be ordered to pay the successful party's costs. The court has wide discretion on costs, including deciding who should bear the costs, the amount of those costs and when they are to be paid. The court may disallow the costs if it thinks that they are disproportionate.

49 May a party apply for legal aid to finance court proceedings? What other options are available for parties who may not be able to afford litigation?

Legal aid is available for a limited range of civil disputes. Applicants for legal aid will have to pass merits and means tests. A party who may not be able to afford litigation can obtain free legal advice from organisations such as the Law Centres Network, Citizens Advice and AdviceNow.

A party may also enter into a conditional fee arrangement or damages-based agreement with their lawyer or seek to obtain third-party funding to pursue the claim.

50 Are contingency fee arrangements permissible? Are they commonly used?

Yes, both damages-based agreements (DBAs) and Conditional Fee Arrangements (CFAs) are permissible in certain circumstances.

Under a DBA, the client makes an enhanced payment to its lawyer if it obtains "a specified financial benefit". The amount is a percentage of the compensation received by the client. If the client is unsuccessful, its lawyer will not be paid for the work done under the DBA (although the client will still be potentially liable for the successful party's costs subject to any insurance that it has in place). Under a DBA the lawyer's recovery cannot exceed more than 50 per cent of the sums recovered (or in personal injury cases 25 per cent of the recovery).

Under a CFA, the client will not be liable to pay fees and expenses if it loses the case. If the client wins the case, it will be liable to pay all fees and expenses, and potentially a success fee (which must not exceed 100 per cent of the amount that would have been payable in the absence of the CFA).

51 Is third-party funding allowed in your jurisdiction?

Yes, third-party funding is generally permitted provided that it does not give the funder a right to control the litigation. There are various third-party funders who specialise in providing funding for disputes.

52 Are there fee scales lawyers must follow? Are there upper or lower limits for fees charged by lawyers in your jurisdiction?

There is no mandatory fee scale, although HM Courts & Tribunals Service has published the Solicitors' Guideline Hourly Rates as a point of reference (which is currently under review).

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Simon is a partner at HFW specialising in commercial and insolvency litigation, often involving allegations of fraud or wrongdoing. He has substantial experience of disputes before the English courts, and litigation and arbitration in key venues around the world. Simon has particular expertise in complex contentious insolvency matters, frequently involving concurrent proceedings in a number of jurisdictions. Simon is a solicitor advocate qualified in England and Wales.

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