



## SUMMARY DISMISSAL: SUMMARY JUDGMENT AND STRIKE OUT

**This Client Guide outlines the key points to bear in mind when considering summary dismissal of a claim (or part of a claim) by summary judgment or strike out in English litigation, whether you are facing an application or considering issuing one.**

Summary judgment and strike out are useful tools in resolving disputes at an early stage of the proceedings and are, in effect, mirror images of each other: broadly, a claimant will use the summary judgment route to try and bring the proceedings to an end, whereas the defendant will apply to strike out the claim to bring proceedings to an early conclusion (and can also use a reverse summary judgment procedure, but this is quite rare).

### What are summary judgment and strike out?

Summary judgment and strike out are the processes by which litigation can be brought to an early conclusion, without the need for a trial, avoiding long-running litigation and the costs that would be incurred.

*"[Summary judgment] ... saves expense; it achieves expedition; it avoids the court's resources being used up on cases where this serves no purpose, and I would add, generally, that it is in the interests of justice." (Lord Woolf in Swain v Hillman)*

The court will grant summary judgment or strike out where it considers that the claim or the defence, or some of the issues:

- have no real prospect of success (or for strike out, that there are no reasonable grounds for bringing the claim); and
- there is no other compelling reason why the case should be disposed of at trial.

### When should summary judgment and strike out be considered?

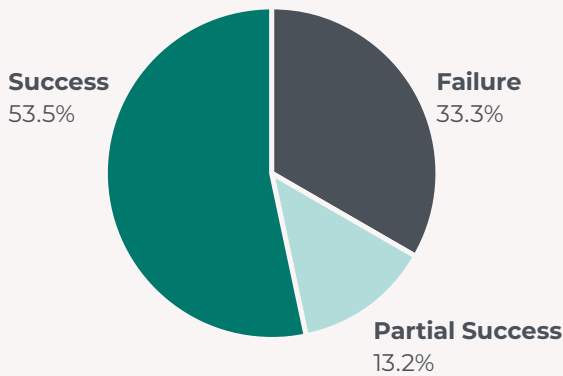
If a party considers that a claim or defence has no real prospect of success at trial, then summary judgment or strike out are useful tools to enable early disposal and to bring the proceedings (in whole or in part) to an end, saving time and costs for all involved.

A claimant is required to wait to apply for summary judgment until the defendant has filed either an acknowledgement of service or their defence. This is to ensure that the defendant has an opportunity to engage with the proceedings.

Defendants will wish to seek summary judgment or strike out as soon as possible. However, it is worth noting that the courts may be critical if an application is made before the acknowledgment of service or defence are filed.

Unless there is clear authority stating that a point cannot be determined summarily, it is for the judge who hears the application to decide whether it is appropriate or not, regardless of complexity.

## Summary Judgment Success Rates



### Chances of success<sup>1</sup>

What are the chances of your summary judgment application succeeding before the English High Court?

Summary judgments<sup>2</sup>:

- succeed in full 53.5%, or in part 13.2% of the time; and
- failed 33.3% of the time

### What type of cases are suitable for summary judgment or strike out?

Summary judgment or strike out are appropriate for clear and obvious cases, where the facts are not in contention, such as in debt claims.

The courts will not conduct a mini-trial, therefore, the greater the complexity of the case, the less appropriate it will be to apply for summary judgment or strike out. It would be unusual for parties to apply in fraud claims or claims where witness or expert evidence needs to be heard, as the court will not carry out an in-depth review of the merits of the claim.

### What do parties need to show to defeat a summary judgment or strike out application?

If you have been served with an application for summary judgment or strike out, you are the respondent, and to defeat the application will need to show that:

1. the claim would have a “*real, as opposed to a fanciful, prospect of success*” (*Swain v Hillman*) if it proceeded to trial.
  - This is a relatively low threshold to overcome. “*Real*” meaning the chance of the claim or defence succeeding is more than simply arguable. A “*fanciful*” chance of winning would be if there was no substance to the claim and it was contradicted by the evidence surrounding it; or

2. there is a compelling reason for the case to go to trial.
  - Examples include where the respondent has been unable to contact an important witness or needs more time to investigate their claim, which in turn, may then lead to a prospect of success at trial.

The burden rests on the applicant to prove that the respondent is unlikely to succeed. However, the respondent should not simply rely on its claim/defence or fail to submit a response to the application, as the question of success needs to be addressed.

### Costs

In most cases the party succeeding in obtaining summary judgment or strike out will be awarded their recoverable costs.

### Advantages and Disadvantages of applying for summary judgment or strike out

Advantages	Disadvantages
Early resolution, if successful	Relatively low threshold to defeat the application
Saves costs, if successful	Additional costs, if unsuccessful
Repeated applications can be made where circumstances change	Will cause a delay and increases duration of the dispute, as the application will stay (or pause) the claim
Narrows the issues for trial, if unsuccessful	Reveals the strength of the case at an earlier stage, if unsuccessful
Flushes out counter-party’s evidence, useful if unsuccessful	
Can increase the chance of settlement	

### What is the process?

The precise timings involved in the exchange of evidence will vary between the courts, therefore, the relevant Civil Procedural Rules, Practice Directions, and Court Guides should be reviewed.

In terms of timings for the actual hearing, this depends in which court the application is made. However, it is likely to be approximately six to eight weeks after the application has been issued.

<sup>1</sup> Data is taken from data analytics platform, Solomonic.

<sup>2</sup> As at the date of writing

## The process

Applications for summary judgment or strike out are usually issued early in the proceedings, but can be applied for at any time by the parties or the court (usually after the defence has been filed).

### 1. The Application

- **Must state the basis on which the order is sought**
  - *Including the law and the facts relied upon*
  - *Contain a statement of belief that the claim/defence has no real prospect of success*
- **Must be made on notice to the respondent, with supporting evidence**

### 2. Pre-hearing

- **The parties are required to file skeleton arguments and court bundles with the court, and serve these upon each other in advance of the hearing**

### 3. The Hearing

- **Most applications will last less than a day**
- **A judge or master will preside**
- **Judgment will be given at the hearing, or a short time later**
- **Arguments on costs will follow**

### 4. Possible Orders

- **Summary judgment on the claim/particular issue**
- **Strike out or dismissal of the claim**
- **Dismissal of the application and directions for steps to be taken in the proceedings**
- **Costs and interest**
- **Orders for summary judgment or strike out can be appealed, permission is required**

**This client guide was produced by Nicola Gare. Should you require any further information or assistance with any of the issues dealt with here, please do not hesitate to contact Nicola or your usual HFW contact to discuss.**



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