



UK – EU Cross-Border Disputes: Where Should I Bring My Claim?

On 24 December 2020, the European Union and the United Kingdom agreed on a trade deal that came into effect at 11 pm on 31 December 2020. If you are a UK-based business currently trading with EU-based suppliers and/or customers, or vice versa, there are some significant changes to where you may bring a claim against your supplier/customers.

This blog looks particularly at issuing proceedings in the Courts of England and Wales (“the E&W Courts”) where you, or another party to the dispute, are based in an EU member state. Different rules may apply in Scotland or Northern Ireland.

My contract states which Court has jurisdiction to deal with a dispute

If you have agreed for a particular Court (e.g. the E&W Courts) to have “exclusive jurisdiction”, under the Hague Convention on Choice of Courts, the E&W Courts and most courts in EU member states (“the EU courts”) will generally uphold that agreement, save for certain exceptions.

Reaching an agreement, e.g. by having a well-drafted contractual term on the choice of Courts before you enter into a contract for goods and/or services, therefore could help remove some of the uncertainty in the event of a dispute, although such agreements can be inflexible. Please contact us if you would like advice from our [Corporate](#) department in this regard.

There has been no agreement on jurisdiction

Previously, EU law set out specific rules which determined where parties could sue and be sued. Those rules no longer apply between the UK and the EU; instead, in the absence of any enforcement treaty between the UK and the EU/ individual member states, the laws of the relevant Court where you are seeking to bring your claim will apply.

The E&W Courts will now generally only process claims if they are satisfied that the E&W Court is the “appropriate forum” for the dispute. The EU courts, and the courts in Scotland and Northern Ireland, will have their own rules on whether they can process your claim.

Other issues you will need to consider

Even if you satisfy the test for jurisdiction in the E&W Courts, it may not be the most suitable forum for you to proceed with your dispute.

As the former EU rules and procedures for serving Court documents on another party are no longer applicable, the process is likely to take more time and be more costly. Likewise, the EU courts are no longer bound to recognise and enforce a judgment issued by the E&W Courts (and vice versa); it will depend on their local laws. You need to consider whether a judgment obtained in E&W Courts is likely to be enforceable in the other party's jurisdiction. This may therefore mean a foreign Court, or alternative dispute resolution methods such as arbitration could be a better choice for your dispute.

Also, unless you have reached an agreement as to applicable law, it will continue to be determined by the EU rules on the same, which often means the law of the country where the supplier or manufacturer is based will apply (again, subject to certain exceptions). It could be easier and more appropriate to issue your claim in the courts of that country.

Jurisdiction is rarely a straightforward matter and it is true that the new rules create uncertainty for cross-border disputes.

If you would like advice and assistance with a dispute, please do not hesitate to contact our specialist [Litigation & Recoveries](#) team at online.enquiries@LA-law.com.