HER MAJESTY'S COURTS SERVICE hmcs

EX**307**

The small claims track

The small claims track provides a simple and informal way of resolving disputes. You should be able to do this without a solicitor. This leaflet tells you about the sort of cases that are likely to be allocated to it and about how cases in the small claims track will be handled.

Before issuing a claim you should read the leaflet **EX301 - Making a claim? Some questions to ask yourself**. It provides answers to those questions that should help you to decide if going to court is going to be worthwhile for you. It also draws attention to a number of alternative ways in which disputes may be resolved without going to court. You may also find it helpful to read the leaflet **EX306 - The defendant disputes all or part of my claim** which explains how the allocation process begins. These and other leaflets can be obtained free from any county court or from Her Majesty's Courts Service website www.hmcourts-service.gov.uk.

Remember that the leaflets can only give you a general idea of what is likely to happen. They cannot explain everything about court rules, costs and procedures which may affect different types of claim in different ways.

If a claim is disputed ('defended') you will be sent a copy of the defendant's defence. You will also be sent an allocation questionnaire. If the small claims track appears to be the most just and cost-effective track for your claim, the questionnaire will be in **Form N149 Allocation questionnaire (Small claims track)**. Otherwise the questionnaire will be in **Form N150**. Whichever questionnaire is sent to you, the information you provide in it will help the judge decide the most appropriate track for your claim.

If you feel that your case is one that should be dealt with as a small claim in the small claims track, you should indicate this in the questionnaire. However, you must understand that, even though your view and that of the defendant will be taken into account, it is for the judge to decide.

Small Claims Mediation Service

Form N149 Allocation questionnaire (Small claims track) asks whether you would like to the use the free small claims mediation service provided by Her Majesty's Courts Service, to help you settle your claim with the other party.

The Small Claims Mediation Service is a **free** service set up to help court users who currently have an ongoing small claims case. However, since mediation is a voluntary process, it should be noted that mediation will only take place if both (all) parties agree.

Mediation is less formal than a hearing before a judge. It is confidential, can be quicker, and can reduce the build up of costs, and if you are in an ongoing relationship with the other party or parties, a mediation agreement can provide for a more positive relationship in the future.

Mediation also gives you and the other party the opportunity to concentrate on the real issues of the case, which may be in addition to, or even different from, the legal issues. You may come to an agreement, which may include an explanation or an apology, which is something that a court could not order.

The Small Claims Mediator is able to settle the majority of disputes over the telephone without the need for either party to attend court. Alternatively, if you prefer, a face-to-face mediation may be able to be arranged on court premises. If you feel uneasy about meeting or speaking to the other side in the dispute, the mediator can make special arrangements to prevent this happening.

How does the judge decide if my case is a small claim?

As well as your view and that of the defendant, the judge will take into account:

the amount in dispute - the amount in dispute should not be more than £5,000.

the type of claim - these will usually be consumer claims (e.g. goods sold, faulty goods or workmanship), accident claims, disputes about ownership of goods, and disputes between landlords and tenants about repairs, deposits, rent arrears, and so on, **but not possession.**

the amount and type of preparation needed to be able to deal with the case justly the judge will have in mind that this procedure is intended to be simple enough for people to conduct their own cases without a solicitor's help, if they wish. The claim should require only minimal preparation for the final hearing, for example, cases in the small claims track will not normally involve a lot of witnesses or difficult points of law.

If your claim is for less than £5,000, but includes a claim for personal injury, or for housing disrepair to residential premises and damages arising from the disrepair, your case will not be allocated to the small claims track unless the amounts claimed in respect of personal injury, disrepair and damages are each no more than £1,000.

Can I ask for my claim to be dealt with in the small claims track if the amount in dispute is over £5,000?

Yes, but the defendant must agree with your suggestion and the judge must be satisfied that the claim is straightforward enough for the small claims procedure. You should also bear in mind that there are different rules about costs. If a claim for more than £5,000 is allocated to the small claims track, the winning party **will be able to claim costs,** including solicitor's costs, against the losing party. These costs cannot, however, be more than would have been awarded if the case had been dealt with in the fast track.

A leaflet EX305 The fast track and the multi-track explains about those tracks. It is available free from any county court or from our website www.hmcourts-service.gov.uk

How much will it cost and what if I cannot afford it?

The fee you will have to pay to the court will depend on the amount you are claiming, including interest. You will have to pay a court fee unless:

- You receive Income Support
- You receive State Pension Guarantee Credit
- You receive income-based Jobseeker's Allowance
- You receive Working Tax Credit with no element of the Child Tax Credit. Court staff will explain this to you.
- Your gross annual income does not exceed a specified limit. See form EX160A for more details.

If you show that payment of a court fee would involve undue hardship to you, you may be eligible for a part remission. The amount decided will be based on a detailed means-test to assess your disposable income. Court staff will calculate what contribution you should make towards the fee. For further information, or to apply for a fee concession, ask court staff for a copy of the combined booklet and Form **EX160A - Court Fees - Do I have to pay them?** This is also available from any county court office, or a copy of the leaflet can be downloaded from our website at www.hmcourts-service.gov.uk

If you are paying part or all of the court fee, you may pay in cash, by postal order or cheque. Credit and debit cards can only be accepted if you are issuing a claim through Money Claim Online (MCOL). Make your cheque out to HMCS. For your own safety, do not send cash through the post.

If you are using MCOL the court fee will be calculated automatically for you. You will be asked to pay the fee by credit card or debit card.

Will I be able to use an expert to help prove my claim?

You will only be able to use an expert to give evidence if the judge gives you permission. You should not normally get an expert's opinion, or report, before the judge gives you permission.

If you want to use an expert, you should say so in answer to the question about experts in the allocation questionnaire. You must say what the expert's evidence will deal with and whether you would like the expert to give evidence in a written report, orally at the hearing, or both. If at all possible, you should try to agree with the defendant, or the defendant's solicitor, that you will use the same expert. This will save you both costs.

Will I be able to recover the cost of employing an expert from the defendant if I win?

If the judge has given permission for you to use an expert and you win your case, the judge may tell the defendant to pay something towards the cost. You should bear in mind, however, that the judge cannot allow more than £200.

This may not cover the full amount of the expert's fees, especially if the expert writes a report **and** attends the court hearing.

How will I know if I have been given permission to use an expert?

You will be sent **Form N157 (notice of allocation to the small claims track)** which will tell you. It will also tell you when you should send a copy of the expert's report to the court (called 'filing') and to the defendant.

If your claim is worth over £5,000 but the judge has allocated it to the small claims track, you will be sent **Form N160 (notice of allocation to the small claims track (with parties' consent)).**

What other costs might I be able to claim if I win?

Other costs you may be allowed include:

- any court fees you have paid;
- an amount of not more than £260 for legal advice if your claim included an application for an injunction (an order to stop someone doing something), or an order for specific performance (an order to make someone do something, for example, a landlord to carry out repairs);
- an amount of not more than £50 per day each for you, and any witness you may have for loss of earnings due to attending the court hearing; and
- any additional travelling and overnight expenses.

What else will the Form N157 (or Form N160) tell me?

It will tell you what other things you have to do to prepare for the final hearing. These are called ‘directions’. For example, you may be told to send copies of all the documents you intend to use to prove your case to the court and the defendant 14 days before the hearing is due to take place.

It will also tell you that a fee is payable by a specific date for the hearing of the claim. The hearing fee is payable by the claimant (or by the defendant if proceeding on the counterclaim) unless you make an application for a fee concession. Failure to pay the fee will result in the hearing being removed from the list.

The notice will usually also tell you the time, date and place when your hearing will take place, and how much time has been allowed for it. The time allowed is the total amount of time the judge thinks is necessary for both you and the defendant and your witnesses, if any, to put your case. It also includes time for the judge to ask questions, reach a decision and explain the reasons for that decision.

What if the hearing date is inconvenient?

What you can do depends on whether or not you wish to attend the hearing. If, for example, you wish to attend but for some good reason you cannot make the date given, you can apply to the judge for a later date to be set. You may have to pay a fee for your application. A fees leaflet is available from any county court or from our website www.hmcourts-service.gov.uk

If you do not wish to attend for some other reason, for example, if the travel costs of getting to the hearing are high, you can ask the court to deal with the claim in your absence.

In this case, you must write a letter to the court and send a copy to the defendant. Your letter should contain your claim number and the date of the hearing, explain that you will not be attending, and give the reasons why. You should also request the court to decide the claim in your absence using any written evidence you have provided for the court and sent to the defendant. The letter must arrive at the court **no later than seven days before the hearing date**. The letter will ensure that the judge takes into account any written evidence you have sent to the court and the defendant.

Will the judge always set a final hearing date at the allocation stage?

No, not always. The judge can decide to hold a preliminary hearing, or propose that your claim be dealt with without a hearing.

Why would the judge hold a preliminary hearing?

The judge would usually want a preliminary hearing if:

- your claim requires special or unusual steps to be taken ('special directions') which the judge wants to explain to you and the defendant personally; or
- the judge feels that either you, or the defendant, has no real prospect of winning your claim, or defence, and wants to dispose of the claim as soon as possible to save everyone time and money; or
- if your particulars of claim, or the defendant's defence, do not show any reasonable grounds for bringing the claim, or defending it.

What will happen if the judge wants to deal with my claim without a hearing?

The court will send you and the defendant a **Form N159 (notice of allocation to the small claims track (no hearing))**. The notice will tell you that the judge thinks that your claim can be dealt with without a hearing using only written evidence. The notice will ask you to tell the court if you object and will give you a date by which you and the defendant must reply. If one, or both, of you objects, your claim will be dealt with at a hearing. If you do not reply by the date given, the judge may treat your lack of reply as consent.

What should I do to prepare for the final hearing?

You should make sure you do everything the court said you must do within the time given. This is called 'complying with directions'.

If you do not comply, for example, with a direction to send documents to the defendant, you may not be allowed to use them as your evidence.

If you have been told to send documents, including any expert reports, to the defendant and the court, **do not use the originals of these documents.** Send copies, but bring the originals with you to the hearing.

Remember that you will only have a limited amount of time to put your case to the judge. You should assume that you will have slightly less than half the total time allowed for putting your case. Make sure that any documents you want to refer to are in the right order. It is also a good idea to write down the things you want to say. If you do this you will be less likely to forget something which is important and more likely to explain things in the right order.

If the judge has said that you can use a witness or an expert to give evidence at the hearing (rather than just their written evidence), make sure they know where the court is and when the hearing will start. Arrange to meet them at the court some time before the hearing is due to start.

Both you and your witness, if you have one, may find it helpful to read the two leaflets - **EX341- I have been asked to be a witness - what do I do?** and **EX342 - Some things you should know about coming to a court hearing**. These leaflets tell you what you can expect when you arrive at the court building. The witness leaflet will, among other things, tell you what to do if you want to use a particular witness who will not agree to come to court.

Can I take someone with me to the hearing?

Yes. If you do not have a solicitor, you can take someone with you to speak for you. This person is called a 'lay representative' and can be anyone you choose, such as your husband or wife, a relative, a friend or an advice worker. If possible, the lay representative should not be a witness. Your lay representative cannot go to an appointment without you unless you have permission from the court.

Advice agencies cannot generally provide a lay representative to help you at hearings. If you are thinking of asking an agency, contact them as soon as possible and immediately you know your hearing date. They will tell you whether or not they can help. Some lay representatives may want to be paid for helping you at the hearing and you must make sure you know exactly how much this will be.

The district judge can tell a lay representative who misbehaves to leave the hearing.

Remember:

You will have to pay for a lay representative yourself, even if you win the case, and you may wish to consider whether the amount of your claim is worth this.

Lay representatives who charge for helping you may not belong to a professional organisation, and if you are not satisfied with their help there is nobody you can complain to.

Where will the hearing take place?

Small claims hearings will generally be 'public' hearings. A public hearing is one which members of the public can sit in on and hear the case. Your case will usually take place in the judge's room but may take place in a court room.

The reasons a judge may agree that your case can be heard in private - that is, closed to the public - include:

- where you and the defendant have agreed;
- where the hearing takes place on site, for example, at your home or business premises because your claim relates to work done there;
- where publicity would defeat the object of the hearing;
- where the interests of a child or a protected party need to be protected;
- where it includes confidential information; or
- where the court considers it is necessary in the interests of justice.

What will happen at the hearing?

The judge can adopt any method of conducting the hearing which is fair. Generally, however:

- the hearing will be informal;
- the strict rules of evidence will not apply;
- the judge need not take evidence on ‘oath’ (make you swear or affirm) that you are telling the truth; and
- can limit the time you and the defendant have to cross examine (put questions to) each other, or your witnesses; and
- can also limit cross examination to a particular subject or issue.

At the end of the hearing the judge will tell you the decision reached (the judgment) and give brief reasons for it.

What will happen after the hearing?

After the hearing, court staff will send you and the defendant an order. The order, or judgment, will set out the judge’s decision. If either you, or the defendant, had given notice to the court that you would not be attending, you will also receive brief reasons for the decision.

What will happen if the claim is settled or discontinued before the hearing?

You must notify the court as soon as you make a decision so the hearing can be removed from the list. If the court receives notice in writing at least 7 days before the hearing date, that the case is settled or discontinued the hearing fee will be refunded in full.

Small Claims Mediation - you can use this service to settle your claim. In some instances - for example, where the judge has ‘stayed’ (halted) your case to allow you time to mediate - you may not need to pay a hearing fee at all.

If I do not attend the hearing of the claim and I lose, is there anything I can do about it?

If you were neither present nor represented at the hearing, you may apply for judgment made at that hearing to be set aside and the claim re-heard.

You must make the application not more than 14 days after receiving the judgment. Ask the court for a **Form N244 (application notice)**.

The court will tell you when you must come to court for the hearing of the application before a judge.

The judge will only grant an application for judgment to be set aside if:

- you had a good reason for either (i) not attending or being represented at the hearing or (ii) not giving written notice to the court; and
- you have a reasonable prospect of being successful at a re-hearing.

If your application is successful and judgment is set aside, the court will fix a new hearing for the claim. In a straightforward claim the judge may decide to deal with the case immediately after the hearing of the application.

Can I appeal?

If you lose your case and want to appeal against the judge's decision, you will need permission to do so. If you attend the hearing at which the decision is made, you can ask the judge for permission at the end of the hearing.

You must have proper grounds (reasons) to appeal. You cannot simply object to a judge's decision because you think the wrong decision was made.

If you decide you want to appeal you must act quickly. The time within which you must issue your appeal is limited.

The leaflet **EX340 - I want to appeal** explains in more detail how you make your appeal.

Getting help

What additional help is available for court users with a disability?

If you have a disability which makes going to court or communicating difficult, please contact the Customer Service Officer of the court concerned who may be able to help you. If the Customer Service Officer of the court cannot help you, you can contact the Disability Helpline on 0800 358 3506 between 9am and 5pm Monday to Friday. Calls to this number are free. If you are deaf or hard of hearing, you can use the Minicom service on 0191 478 1476.

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