

11. The small claims track

11.1 Introduction

The vast majority of defended civil actions in the county court are dealt with on the small claims track. The object of the small claims track procedure is to achieve a cheap, simple, informal and speedy resolution of disputes. In his Interim Report on Access to Justice, published in June 1995, Lord Woolf said:

‘The role of the judge in small claims is not only that of an adjudicator. It is a key safeguard of the rights of both parties. In most cases, the judge is effectively a substitute for a legal representative. His duty is to ascertain the main matters at issue, to elicit the evidence, to reach a view on the facts of the matter and to give a decision. In some cases he may encourage the parties to settle. In doing so he should ensure that both parties have presented the evidence and called the witnesses germane to their case and that he has identified and considered any issue of law which is pertinent to the case in hand. He must also hold the ring and ensure that each party has a fair chance to present his own case and to challenge that of his opponent’.

11.2 Allocation to small claims track

The Civil Procedure Rules provide that, save for the exceptions mentioned below, the small claims track is the normal track for any claim which has a financial value of not more than £5,000 (CPR r.26.6).

The exceptions are:

- a) any claim for personal injuries unless -
 - (i) the financial value of the claim is not more than £5,000; and
 - (ii) the financial value of any claim for damages for personal injuries is not more than £1,000;
- b) any claim which includes a claim by a tenant of residential premises against his landlord where
 - (i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
 - (ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
 - (iii) the financial value of any other claim for damages is not more than £1,000;
- c) a claim by a tenant of residential premises against his landlord for a remedy in respect of harassment or unlawful eviction (CPR 26.7(4)).

Note that CPR2.3(1) provides that, for these purposes, 'a claim for personal injuries' means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death and that 'personal injuries' include any disease and any impairment of a person's physical or mental condition.

Rule 26.6(2) provides that, for these purposes, 'damages for personal injuries' means damages claimed as compensation for pain, suffering and loss of amenity and does not include any other damages which are claimed. Accordingly, any damages for loss of earnings arising from the injuries would be excluded from the assessment of financial value.

The matters relevant to allocation to a track are set out in CPR26.8. Note that it is for the court to assess the financial value of a claim and, in doing so, any amount not in dispute, any claim for interest, costs and any contributory negligence are to be disregarded. Note the provisions of paras 7.3–7.7 of the Practice Direction which supplements CPR 26 and, in particular, the definition of 'any amount not in dispute'.

Example 1

A issues a claim against B for £7,000 which is due under two contracts, one for £4,000 and the other for £3,000. B admits liability for the £4,000 but disputes the £3,000. The amount in dispute is £3,000.

Example 2

C issues a claim against D for £7,000, which is due under a single contract. D admits he is liable to pay something but says the amount is £4,000. The amount in dispute is £7,000.

Example 3

E issues a claim against F for £7,000, of which £4,000 represents the write-off value of his vehicle and £3,000 represents hire charges. F admits liability for the accident and the amount of the write off claim, but disputes the hire charges. The amount in dispute is £3,000.

Example 4

G issues a claim against H for £7,000, being the write-off value of his vehicle following an accident. H admits liability for the accident but says H's vehicle was worth only £4,000. The amount in dispute is £7,000.

Note that, in Examples 1 and 3, a specific sum is claimed as a distinct item for which liability is admitted. That is not so in Examples 2 and 4.

11.2.1 Allocation to the small claims track of cases which are outside its scope

CPR 26.7(3) provides that the court will not allocate proceedings to a track if the financial value of any claim in those proceedings, assessed by the court under CPR26.8, exceeds the limit for that track, unless all parties consent to the allocation of the claim to that track.

However, note that CPR 26 PD 8.1(2) provides that the court will not allocate such a claim to the small claims track, notwithstanding the parties' consent, unless it is satisfied that it is suitable for that track, and that the court will not normally allow more than one day for the hearing of such a claim.

CPR 27.14(5) provides that, when such a claim is allocated to the small claims track, the small claims track costs provisions will apply unless the parties agree that the fast-track costs provisions are to apply, in which case it will be treated for costs purposes as if it were proceeding on the fast track except that the trial costs will be in the discretion of the court but will not exceed the fixed fast-track trial costs set out in CPR46.2.

As a preliminary matter, note the provisions of CPR27.2 as to those parts of the Rules which do not apply to claims which have been allocated to the small claims track. Conversely, CPR27.2 does not apply to any claim, regardless of its value before it is allocated to that track.

11.3 Jurisdiction

Paragraph 1 of CPR 27 PD 1 provides that the functions of the court described in CPR 27 which are to be carried out by a judge will generally be carried out by a district judge, but may be carried out by a circuit judge.

11.4 Directions

Before allocating the claim, the court may require a party to give further information about their case (CPR 27 PD 2.3).

Following allocation (CPR 27.4), the court may deal with a claim allocated to the small claims track in one of the following ways:

- a) giving standard directions and fixing a date for the final hearing
- b) giving special directions and fixing a date for the final hearing
- c) giving special directions and directing that the court will consider what further directions are to be given no later than 28 days after the date the special directions were given
- d) fixing a date for a preliminary hearing under CPR 27.6, or
- e) giving notice that it proposes to deal with the claim without a hearing under CPR27.10 and inviting the parties to notify the court by a specified date if they agree the proposal.

11.4.1 *Standard directions*

Standard directions are directions that each party shall, at least 14 days before the date fixed for the final hearing, file and serve on every other party copies of all documents (including any expert's report) on which he intends to rely at the hearing and any other standard directions set out in the relevant Practice Direction.

Appendix A of the Practice Direction to CPR 27 contains information and documentation the court usually needs in particular types of cases (road accident cases, building disputes, repairs, goods sold and similar contractual claims, landlord and tenant claims and breach of duty claims).

Appendix B sets out the Standard Directions that the court may give. These do not include a direction for exchange of witness statements.

11.4.2 Special directions

Special directions are directions given in addition to or instead of the standard directions. Appendix C of the Practice Direction to CPR 27 contains some special directions which the court may give, but it is not exhaustive. It includes a direction for the exchange of witness statements. In deciding whether to make such order, you must have regard to the factors set out in CPR 27 PD 2.5, including whether the parties are represented, the amount and nature of matters in dispute, the need to avoid undue formality, cost or delay, and whether the need for a party to clarify his case can better be dealt with by an order that the party provide further information before the claim is allocated.

11.4.3 Preliminary hearings

The power to hold a preliminary hearing is restricted by CPR27.6 which provides that such a hearing may be held by a court only:

- a) where:
 - (i) it considers that special directions are needed to ensure a fair hearing, and
 - (ii) it appears necessary for a party to attend at court to ensure that he understands what he must do to comply with the special directions, or
- b) to enable it to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing, or
- c) to enable it to strike out a statement of case or part of a statement of case on the basis that the statement of case, or the part to be struck out, discloses no reasonable grounds for bringing or defending the claim.

When considering whether or not to hold a preliminary hearing, you must have regard to the desirability of limiting the expense to the parties of attending court.

If all parties agree, you may treat the preliminary hearing as the final hearing of the claim. Otherwise, you will fix the date of the final hearing, provide a time estimate for the hearing and give any appropriate directions.

11.4.4 Dealing with the claim without a hearing

If all parties agree to the court dealing with the claim without a hearing under CPR.27.10, CPR PD 5.4 provides that you must prepare a note of your reasons, a copy of which will be sent by the court to each party.

Note that CPR 27.5 provides that no expert may give evidence, whether written or oral, at a hearing without the permission of the court.

Tick Box Forms have been prepared to accompany the range of directions which you may give in relation to a claim which has been allocated to the small claims track. Use the Tick Box Forms wherever possible.

11.5 The final hearing

11.5.1 Pre-reading

Whatever the listing arrangements and whatever time pressures there may be, it is essential that you read the papers before the parties enter.

11.5.2 Public or private hearing?

CPR 27 PD 4.1 provides that the general rule is that a small claim hearing will be in public. However, you may decide to hold it in private if the parties agree or a ground mentioned in CPR 39.2(3) applies.

A hearing that takes place at the court will generally be in your room but it may take place in a courtroom. CPR 39.2(2) provides that the requirement for a hearing to be in public does not require the court to make special arrangements for accommodating members of the public. Where the hearing is taking place in public, members of the public should be admitted where practicable and, should you consider it appropriate, you may adjourn the proceedings to a larger room or court. Note, in this respect the provisions of CPR 39 PD 1.4, 1.4A and 1.7–1.10.

The holding of the hearing in public does not affect the informality of the proceedings and robes will not be worn.

A hearing, or part of a hearing, which takes place other than at the court, for example at the home or business premises of a party, will not be in public (CPR 39 PD 1.7).

11.5.3 Entry of parties

It is important that litigants understand what is going to happen at the hearing and so, after initial introductions, try to put the parties at their ease and explain:

- a) the procedure to be followed, including the questioning of witnesses
- b) your understanding of the nature of the dispute and main issues

- c) where appropriate, the law to be applied (in simple language)
- d) that you will give a reasoned judgment at the end, applying the law to the facts as you have found them.

11.5.4 Legal and other representatives

Parties may present their own case at a hearing, or a lawyer or lay representative may present it for them. CPR 27 PD 3.1 defines a lawyer as a barrister, a solicitor or a legal executive employed by a solicitor. A lay representative means any other person.

CPR 27 PD 3.2 provides that a lay representative may only present the case if the party is present at the hearing, unless he is the employee of a corporate party or the court gives permission. Note that any of its officers or employees may represent a corporate party.

11.5.5 The conduct of the hearing

It needs great skill to elicit in a patient, firm but interested manner a party's case. Being interventionist is a fundamental requirement if you are conducting the hearing of cases on the small claims track. However, parties should feel they have had a fair chance to explain the claim or defence, without undue time being spent on irrelevancies.

CPR 27.8 provides that you may adopt any method of proceeding at a hearing that you consider to be fair, that hearings will be informal, that the strict rules of evidence do not apply, that you need not take evidence on oath and that you may limit cross-examination.

CPR 27 PD 4.3 provides that you may, in particular:

- a) ask questions of any witness yourself before allowing any other person to do so
- b) ask questions of all or any of the witnesses yourself before allowing any other person to ask questions of any witnesses
- c) refuse to allow cross-examination of any witness until all the witnesses have given evidence-in-chief
- d) limit cross-examination of a witness to a fixed time or to a particular subject or issue, or both.

Generally:

- a) be aware of the law applying to the case and try and ensure that only relevant evidence is adduced
- b) the rules of natural justice must be observed, i.e. a party must be allowed to call relevant evidence, put proper questions to the other party, and be granted an adjournment where the interests of justice so require

- c) witnesses should be present during the hearing but, if excluded, upon their being called, you should outline the nature of the dispute and the area(s) where you think they may be able to help
- d) take the time necessary for a fair hearing
- e) consider - would a view be helpful?
- f) allow the parties or their representatives a final say.

CPR 27 PD 5.1 provides that a hearing which takes place at the court will be tape recorded. It is suggested that you should also make a note of the central points of the oral evidence not only for the preparation of your judgment but also for the purpose of any appeal should a transcript of the hearing not be available.

11.5.6 Non-attendance of parties at a final hearing

Note the provisions of CPR27.9 and that, in particular, if a party who does not attend a final hearing has given the court written notice, at least seven days before the date of the hearing, that he will not attend and has, in that notice, requested the court to decide the claim in his absence, and has served on the other party at least seven days before the hearing date any other documents which he has filed with the court, the court will take into account that party's statement of case and any other documents he has filed when it decides the claim.

CPR 27 PD 5.4 provides that, in such circumstances, the judge will prepare a note of his reasons and the court will send a copy to each party.

11.5.7 Judgment

Preparation

Take whatever time is necessary to marshal your thoughts, reach a decision and give a short reasoned judgment.

Law

The substantive law of England and Wales must be applied. If necessary, adjourn for a few minutes or, in the last resort, reserve judgment to consult authorities. The law must be applied in all cases, regardless of the amount of the claim and even if, in your view, the law would produce an unjust outcome.

Form

CPR 27.8(6) provides that the court must give reasons for its decision and CPR 27 PD 5.3(1) provides that the judge may give reasons for his judgment as briefly and simply as the nature of the case allows, and that this will normally be done orally at the hearing, but it may be done later at a hearing either orally or in writing. Wherever possible, you should give your judgment on the day of the hearing.

A judgment should normally contain:

- a) a summary of the dispute
- b) clear findings of disputed facts
- c) brief reasons for preferring one side's evidence
- d) a simple explanation of the law applicable.

11.5.8 Costs and interest

At the conclusion of the hearing, deal with costs or expenses (CPR 27.14). A claimant who wishes to claim costs or expenses, within the limit of the small claims track, should be informed that you can award only:

- a) the fixed costs payable under Pt 45 attributable to issuing the claim which are payable under Pt 45 or would be payable under Pt 45 if that part applied to the claim
- b) if the proceedings included a claim for an injunction or an order for specific performance, a sum not exceeding £260 for legal advice and assistance relating to that claim
- c) if the hearing is an appeal, costs assessed by summary assessment, which are not subject to the limitations on costs which apply to the first instance determination of the claim
- d) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably
- e) any court fees paid by the claimant
- f) expenses which the claimant or a witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing
- g) a sum not exceeding £50 per day, for each person, for any loss of earnings or loss of leave by the claimant or a witness due to attending a hearing, and
- h) in respect of expert's fees, a sum not exceeding £200 for each expert.

(CPR 27.14 and para. CPR 27 PD 7.)

Award interest if claimed, unless there is good reason for disallowing it.

11.5.9 Enforcement

Consider whether an instalment order is appropriate. If it is, draw attention to the provisions of the Register of County Court Judgments Regulations 1985 as to the registration of judgments.

11.6 Setting judgment aside and rehearing

CPR 27.11 sets out the procedure which governs an application to set aside a judgment under Pt 27 and a rehearing of the claim.

11.7 Appeals

The procedure in relation to appeals is governed, principally, by CPR 52 and its accompanying Practice Direction.

CPR 52 PD 4.3A requires a judge, where a party applies for permission to appeal at the hearing at which the decision was made, to state whether the judgment or order he made is final, whether an appeal lies and, if so, to which appeal court and, if he refuses permission to appeal, the appropriate appeal court to which any further application can be made. Therefore it is necessary to be familiar with the appeal process.

CPR 52 PD 2A.1 provides that an appeal from a decision of a district judge in a case allocated to the small claims track is made to a circuit judge whilst that of a circuit judge is made to a High Court judge.

CPR 52.11 provides that an appeal may be allowed where the decision of the lower court was wrong or was unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

An appellant or respondent requires permission to appeal and an application for such permission may be made either to the lower court at the hearing at which the decision to be appealed was made or to the appeal court in an appeal notice. You should only give permission to appeal where you consider the appeal would have a real prospect of success or where there is some other compelling reason why the appeal should be heard. The provisions as to permission to appeal are to be found in CPR52.3.

The documents to be filed with the notice of appeal, where the appeal relates to a claim allocated to the small claims track, are set out in CPR 52 PD 20.5.8(1).

Either at the commencement of a small claims hearing, or after you have given judgment, you should explain to the parties, particularly if they are unrepresented, the grounds for an appeal against your decision and the requirement for permission to appeal. Should either party apply for permission to appeal, you should record your decision and the reasons for allowing or refusing permission on Form N460.

Note, also, that CPR 27 PD 8 provides that where the court dealt with the claim, to which the appellant is a party, under CPR27.10 without a hearing or in his absence because he gave notice under CPR27.9 requesting the court to decide the claim in his absence, the application for permission to appeal must be made to the appeal court.

CPR 27 PD 8 also provides that where an appeal is allowed, the appeal court will, if possible, dispose of the case at the same time without referring the claim to the lower court or ordering a new hearing and that it may do so without hearing further evidence.