

MANAGING SMALL CLAIMS

The small claims track provides a cheap and simple system for small claims. It is the "normal" track for any claim which has a financial value of no more than £10,000.

Allocation to Small Claims Track

Where the claim is £10,000 or less, once the court receives the defence it will send out a notice of proposed allocation indicating that the court is likely to allocate the case to the small claims track. The notice of proposed allocation will require the parties to complete and send to court a directions questionnaire by a specified date. The directions questionnaire will give the court information about the claim.

Directions

The court will then normally provide standard directions (a timetable setting out the steps to be taken by the parties to get the case ready for trial). This will usually include directions for each party to file and serve copies of all documents on which it intends to rely at the hearing of the dispute no later than 14 days before the hearing, and provide a fixed date for that hearing (within weeks not months).

There are also "standard directions" for particular types of claim, for example building disputes and other contractual claims, and landlords' claims for damage caused by tenants. The court has discretion to call a preliminary hearing, but it will try to avoid doing so unless exceptional circumstances apply.

Determination of claim without hearing

The court can propose that the claim be dealt with on paper without a hearing, and assuming that both parties consent, the court will make a determination. The court will look to do this if:

- it can be decided solely on the basis of the documents provided; and
- it would be disproportionately expensive for the parties to attend.

If a determination is made in this way, neither party can apply to set it aside.

Any of the parties may also give written notice that they may not be able to attend. In that case, the court will take into account the statement of case and any documents filed. Again that

party would not be able to set aside the court's determination.

Summary Judgment

By the nature of the small claims track, the normal rules of disclosure and evidence do not apply. An application for summary judgment (i.e. early judgment) can in theory be made in the small claims track, but it is not normally necessary to do so since the directions are usually simple and the final hearing date promptly given. However it might be worth considering if, for example, where it may be expensive to collect and collate evidence for a final hearing.

The Hearing

The court may adopt any method of proceeding at the hearing it considers fair, but the following is a guideline as to how the hearing is likely to be conducted:

- strict rules of evidence do not apply
- a party may represent himself (for companies this includes a director or other suitable employee) or may be represented by a solicitor/barrister or a lay representative (but in that case usually only if the party is also present at the hearing)
- evidence that is given need not be taken on oath
- the court may limit cross-examination
- expert evidence can only be given, either orally or written, with the permission of the court
- the hearing will be informal and in public
- the hearing will usually be decided by a district judge (or deputy district judge).

There is a very limited right of appeal.

Costs in small claims

Legal fees or fees charged by a lay representative cannot be recovered. However the winning party can recover:

- the issue fee paid by a claimant on commencement of proceedings
- any claimant's solicitor's fixed costs allowed on issue of proceedings
- any costs that the court may assess summarily where a party has behaved unreasonably

The court also has a discretion to award costs for:

- the reasonable travelling expenses of party or witness
- loss of earnings of a party or witness (maximum of £90 per day)
- expert's fees (maximum £750 for each expert)

For further information contact:

Richard King direct line: 01483 734242
email: richard.king@stevens-bolton.com

Michael Frisby direct line: 01483 734244
email: michael.frisby@stevens-bolton.com

This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.

© *Stevens & Bolton LLP April 2013*