

# THE SMALL CLAIMS TRACK

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## 27.1 Scope of this Part

- (1) This Part –
  - (a) sets out the special procedure for dealing with claims which have been allocated to the small claims track under Part 26; and
  - (b) limits the amount of costs that can be recovered in respect of a claim which has been allocated to the small claims track.

(Rule 27.14 deals with costs on the small claims track)

- (2) A claim being dealt with under this Part is called a small claim.

(Rule 26.6 provides for the scope of the small claims track. A claim for a remedy for harassment or unlawful eviction relating, in either case, to residential premises shall not be allocated to the small claims track whatever the financial value of the claim. Otherwise, the small claims track will be the normal track for –

- any claim which has a financial value of not more than £5,000 subject to the special provisions about claims for personal injuries and housing disrepair claims;
- any claim for personal injuries which has a financial value of not more than £5,000 where the claim for damages for personal injuries is not more than £1,000; and
- any claim which includes a claim by a tenant of residential premises against his landlord for repairs or other work to the premises where the estimated cost of the repairs or other work is not more than £1,000 and the financial value of any other claim for damages is not more than £1,000)

## **27.2 Extent to which other Parts apply**

- (1)** The following Parts of these Rules do not apply to small claims –
  - (a) Part 25 (interim remedies) except as it relates to interim injunctions<sup>(GL)</sup>;
  - (b) Part 31 (disclosure and inspection);
  - (c) Part 32 (evidence) except rule 32.1 (power of court to control evidence);
  - (d) Part 33 (miscellaneous rules about evidence);
  - (e) Part 35 (experts and assessors) except rules 35.1 (duty to restrict expert evidence), 35.3 (experts – overriding duty to the court), 35.7 (court’s power to direct that evidence is to be given by single joint expert) and 35.8 (instructions to a single joint expert);
  - (f) Subject to paragraph (3), Part 18 (further information);
  - (g) Part 36 (offers to settle); and
  - (h) Part 39 (hearings) except rule 39.2 (general rule – hearing to be in public).
- (2)** The other Parts of these Rules apply to small claims except to the extent that a rule limits such application.
- (3)** The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

## **27.3 Court’s power to grant a final remedy**

The court may grant any final remedy in relation to a small claim which it could grant if the proceedings were on the fast track or the multi-track.

## **27.4 Preparation for the hearing**

- (1)** After allocation the court will –
  - (a) give standard directions and fix a date for the final hearing;
  - (b) give special directions and fix a date for the final hearing;
  - (c) give special directions and direct 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) fix a date for a preliminary hearing under rule 27.6; or
  - (e) give notice that it proposes to deal with the claim without a hearing under rule 27.10 and invite the parties to notify the court by a specified date if they agree the proposal.
- (2)** The court will –
  - (a) give the parties at least 21 days’ notice of the date fixed for the final hearing, unless the parties agree to accept less notice; and
  - (b) inform them of the amount of time allowed for the final hearing.
- (3)** In this rule –
  - (a) ‘standard directions’ means –
    - (i) a direction 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
    - (ii) any other standard directions set out in Practice Direction 27; and
  - (b) ‘special directions’ means directions given in addition to or instead of the standard directions.

## **27.5 Experts**

No expert may give evidence, whether written or oral, at a hearing without the permission of the court.

(Rule 27.14(3)(d) provides for the payment of an expert's fees)

## **27.6 Preliminary hearing**

- (1)** The court may hold a preliminary hearing for the consideration of the claim, but only –
  - (a)** where –
    - (i)** it considers that special directions, as defined in rule 27.4, 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<sup>(GL)</sup> 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.
- (2)** When considering whether or not to hold a preliminary hearing, the court must have regard to the desirability of limiting the expense to the parties of attending court.
- (3)** Where the court decides to hold a preliminary hearing, it will give the parties at least 14 days' notice of the date of the hearing.
- (4)** The court may treat the preliminary hearing as the final hearing of the claim if all the parties agree.
- (5)** At or after the preliminary hearing the court will –
  - (a)** fix the date of the final hearing (if it has not been fixed already) and give the parties at least 21 days' notice of the date fixed unless the parties agree to accept less notice;
  - (b)** inform them of the amount of time allowed for the final hearing; and
  - (c)** give any appropriate directions.

## **27.7 Power of court to add to, vary or revoke directions**

The court may add to, vary or revoke directions.

## **27.8 Conduct of the hearing**

- (1)** The court may adopt any method of proceeding at a hearing that it considers to be fair.
- (2)** Hearings will be informal.
- (3)** The strict rules of evidence do not apply.
- (4)** The court need not take evidence on oath.
- (5)** The court may limit cross-examination<sup>(GL)</sup>.
- (6)** The court must give reasons for its decision.

## **27.9 Non-attendance of parties at a final hearing**

- (1)** If a party who does not attend a final hearing –
  - (a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;
  - (b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and
  - (c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above, the court will take into account that party's statement of case and any other documents he has filed and served when it decides the claim.
- (2)** If a claimant does not –
  - (a) attend the hearing; and
  - (b) give the notice referred to in paragraph (1), the court may strike out<sup>(GL)</sup> the claim.
- (3)** If –
  - (a) a defendant does not –
    - (i) attend the hearing; or
    - (ii) give the notice referred to in paragraph (1); and
  - (b) the claimant either –
    - (i) does attend the hearing; or
    - (ii) gives the notice referred to in paragraph (1),the court may decide the claim on the basis of the evidence of the claimant alone.
- (4)** If neither party attends or gives the notice referred to in paragraph (1), the court may strike out<sup>(GL)</sup> the claim and any defence and counterclaim.

## **27.10 Disposal without a hearing**

The court may, if all parties agree, deal with the claim without a hearing.

## **27.11 Setting judgment aside and re-hearing**

- (1)** A party –
  - (a) who was neither present nor represented at the hearing of the claim; and
  - (b) who has not given written notice to the court under rule 27.9(1), may apply for an order that a judgment under this Part shall be set aside<sup>(GL)</sup> and the claim re-heard.
- (2)** A party who applies for an order setting aside a judgment under this rule must make the application not more than 14 days after the day on which notice of the judgment was served on him.
- (3)** The court may grant an application under paragraph (2) only if the applicant –
  - (a) had a good reason for not attending or being represented at the hearing or giving written notice to the court under rule 27.9(1); and
  - (b) has a reasonable prospect of success at the hearing.
- (4)** If a judgment is set aside<sup>(GL)</sup> –
  - (a) the court must fix a new hearing for the claim; and

- (b) the hearing may take place immediately after the hearing of the application to set the judgment aside and may be dealt with by the judge who set aside<sup>(GL)</sup> the judgment.
- (5) A party may not apply to set aside<sup>(GL)</sup> a judgment under this rule if the court dealt with the claim without a hearing under rule 27.10.

Rules 27.12 and 27.13 are revoked.

#### **27.14 Costs on the small claims track**

- (1) This rule applies to any case which has been allocated to the small claims track unless paragraph (5) applies.

(Rules 44.9 and 44.11 make provision in relation to orders for costs made before a claim has been allocated to the small claims track)

- (2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except –
  - (a) the fixed costs attributable to issuing the claim which –
    - (i) are payable under Part 45; or
    - (ii) would be payable under Part 45 if that Part applied to the claim;
  - (b) in proceedings which included a claim for an injunction or an order for specific performance a sum not exceeding the amount specified in Practice Direction 27 for legal advice and assistance relating to that claim;
  - (c) any court fees paid by that other party;
  - (d) expenses which a party or witness has reasonably incurred in travelling to and from a hearing or in staying away from home for the purposes of attending a hearing;
  - (e) a sum not exceeding the amount specified in Practice Direction 27 for any loss of earnings or loss of leave by a party or witness due to attending a hearing or to staying away from home for the purposes of attending a hearing;
  - (f) a sum not exceeding the amount specified in Practice Direction 27 for an expert's fees; and
  - (g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably.
- (3) A party's rejection of an offer in settlement will not of itself constitute unreasonable behaviour under paragraph (2)(g) but the court may take it into consideration when it is applying the unreasonableness test.
- (4) The limits on costs imposed by this rule also apply to any fee or reward for acting on behalf of a party to the proceedings charged by a person exercising a right of audience by virtue of an order under section 11 of the Courts and Legal Services Act 1990<sup>1</sup> (a lay representative).
- (5) Where –
  - (a) the financial value of a claim exceeds the limit for the small claims track; but
  - (b) the claim has been allocated to the small claims track in accordance with rule 26.7(3),the small claims track costs provisions will apply unless the parties agree that the fast track costs provisions are to apply.
- (6) Where the parties agree that the fast track costs provisions are to apply, the claim and any appeal will be treated for the purposes of costs as if it were proceeding on the fast track except that trial costs will be in the discretion of the court and will not exceed the amount set out for the value of claim in rule 46.2 (amount of fast track trial costs).

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<sup>1</sup> 1990 c.41.

### **27.15 Claim re-allocated from the small claims track to another track**

Where a claim is allocated to the small claims track and subsequently re-allocated to another track, rule 27.14 (costs on the small claims track) will cease to apply after the claim has been re-allocated and the fast track or multi-track costs rules will apply from the date of re-allocation.