

PRACTICE DIRECTION 27

SMALL CLAIMS TRACK

This Practice Direction supplements CPR Part 27

JUDGES

- 1** The functions of the court described in Part 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.

CASE MANAGEMENT DIRECTIONS

- 2.1** Rule 27.4 explains how directions will be given, and rule 27.6 contains provisions about the holding of a preliminary hearing and the court's powers at such a hearing.
- 2.2** Appendix A sets out details of the case that the court usually needs in the type of case described. Appendix B sets out the Standard Directions that the court may give. Appendix C sets out Special Directions that the court may give.
- 2.3** Before allocating the claim to the Small Claims Track and giving directions for a hearing the court may require a party to give further information about that party's case.
- 2.4** A party may ask the court to give particular directions about the conduct of the case.
- 2.5** In deciding whether to make an order for exchange of witness statements the court will have regard to the following –
 - (a) whether either or both the parties are represented;
 - (b) the amount in dispute in the proceedings;
 - (c) the nature of the matters in dispute;
 - (d) whether the need for any party to clarify his case can better be dealt with by an order under paragraph 2.3;
 - (e) the need for the parties to have access to justice without undue formality, cost or delay.

REPRESENTATION AT A HEARING

- 3.1** In this paragraph:
 - (1) a lawyer means a barrister, a solicitor or a legal executive employed by a solicitor, and
 - (2) a lay representative means any other person.
- 3.2**
 - (1) A party may present his own case at a hearing or a lawyer or lay representative may present it for him.
 - (2) The Lay Representatives (Right of Audience) Order 1999 provides that a lay representative may not exercise any right of audience:–
 - (a) where his client does not attend the hearing;
 - (b) at any stage after judgment; or
 - (c) on any appeal brought against any decision made by the district judge in the proceedings.

- (3) However the court, exercising its general discretion to hear anybody, may hear a lay representative even in circumstances excluded by the Order.
- (4) Any of its officers or employees may represent a corporate party.

SMALL CLAIM HEARING

4.1

- (1) The general rule is that a small claim hearing will be in public.
- (2) The judge may decide to hold it in private if:
 - (a) the parties agree, or
 - (b) a ground mentioned in rule 39.2(3) applies.
- (3) 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.

4.2 A hearing that takes place at the court will generally be in the judge's room but it may take place in a courtroom.

4.3 Rule 27.8 allows the court to adopt any method of proceeding that it considers to be fair and to limit cross-examination. The judge may in particular:

- (1) ask questions of any witness himself before allowing any other person to do so,
- (2) ask questions of all or any of the witnesses himself before allowing any other person to ask questions of any witnesses,
- (3) refuse to allow cross-examination of any witness until all the witnesses have given evidence in chief,
- (4) limit cross-examination of a witness to a fixed time or to a particular subject or issue, or both.

RECORDING EVIDENCE AND THE GIVING OF REASONS

5.1 A hearing that takes place at the court will be tape recorded by the court. A party may obtain a transcript of such a recording on payment of the proper transcriber's charges.

5.2 Attention is drawn to section 9 of the Contempt of Court Act 1981 (which deals with the unauthorised use of tape recorders in court) and to the Practice Direction ([1981] 1 WLR 1526) which relates to it.

5.3

- (1) The judge may give reasons for his judgment as briefly and simply as the nature of the case allows.
- (2) He will normally do so orally at the hearing, but he may give them later at a hearing either orally or in writing.

5.4 Where the judge decides the case without a hearing under rule 27.10 or a party who has given notice under rule 27.9(1) does not attend the hearing, the judge will prepare a note of his reasons and the court will send a copy to each party.

5.5 Nothing in this practice direction affects the duty of a judge at the request of a party to make a note of the matters referred to in section 80 of the County Courts Act 1984.

NON-ATTENDANCE OF A PARTY AT A HEARING

- 6.1** Attention is drawn to rule 27.9 (which enables a party to give notice that he will not attend a final hearing and sets out the effect of his giving such notice and of not doing so), and to paragraph 3 above.
- 6.2** Nothing in those provisions affects the general power of the court to adjourn a hearing, for example where a party who wishes to attend a hearing on the date fixed cannot do so for a good reason.

COSTS

- 7.1** Attention is drawn to Rule 27.14 which contains provisions about the costs which may be ordered to be paid by one party to another.
- 7.2** The amount which a party may be ordered to pay under rule 27.14(2)(b) (for legal advice and assistance in claims including an injunction or specific performance) is a sum not exceeding £260.
- 7.3** The amounts which a party may be ordered to pay under rule 27.14(3)(c) (loss of earnings) and (d) (experts' fees) are:
- (1) for the loss of earnings or loss of leave of each party or witness due to attending a hearing or staying away from home for the purpose of attending a hearing, a sum not exceeding £50 per day for each person, and
 - (2) for expert's fees, a sum not exceeding £200 for each expert.

(As to recovery of pre-allocation costs in a case in which an admission by the defendant has reduced the amount in dispute to a figure below £5,000, reference should be made to paragraph 7.4 of Practice Direction 26 and to paragraph 15.1(3) of the Costs Practice Direction)

APPEALS

- 8.1** Part 52 deals with appeals and attention is drawn to that Part and Practice Direction 52.
- 8A** An appellant's notice in small claims must be filed and served in Form N164.
- 8.2** Where the court dealt with the claim to which the appellant is a party:
- (1) under rule 27.10 without a hearing; or
 - (2) in his absence because he gave notice under rule 27.9 requesting the court to decide the claim in his absence,
- an application for permission to appeal must be made to the appeal court.
- 8.3** 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. It may do so without hearing further evidence.

Appendix A

INFORMATION AND DOCUMENTATION THE COURT USUALLY NEEDS IN PARTICULAR TYPES OF CASE

ROAD ACCIDENT CASES (where the information or documentation is available)

- witness statements (including statements from the parties themselves);
- invoices and estimates for repairs;
- agreements and invoices for any car hire costs;
- the Police accident report;
- sketch plan which should wherever possible be agreed;
- photographs of the scene of the accident and of the damage.

BUILDING DISPUTES, REPAIRS, GOODS SOLD AND SIMILAR CONTRACTUAL CLAIMS (where the information or documentation is available)

- any written contract;
- photographs;
- any plans;
- a list of works complained of;
- a list of any outstanding works;
- any relevant estimate, invoice or receipt including any relating to repairs to each of the defects;
- invoices for work done or goods supplied;
- estimates for work to be completed;
- a valuation of work done to date.

LANDLORD AND TENANT CLAIMS (where the information or documentation is available)

- a calculation of the amount of any rent alleged to be owing, showing amounts received;
- details of breaches of an agreement which are said to justify withholding any deposit itemised showing how the total is made up and with invoices and estimates to support them.

BREACH OF DUTY CASES (negligence, deficient professional services and the like)

Details of the following:

- what it is said by the claimant was done negligently by the defendant;
- why it is said that the negligence is the fault of the defendant;
- what damage is said to have been caused;
- what injury or losses have been suffered and how any (and each) sum claimed has been calculated;
- the response of the defendant to each of the above.

Appendix B

STANDARD DIRECTIONS

(For use where the district judge specifies no other directions)

THE COURT DIRECTS:

- 1** Each party must deliver to every other party and to the court office copies of all documents on which he intends to rely at the hearing no later than [] [14 days before the hearing]. (These should include the letter making the claim and the reply.)
- 2** The original documents must be brought to the hearing.
- 3** [Notice of hearing date and time allowed.]
- 4** The parties are encouraged to contact each other with a view to trying to settle the case or narrow the issues. However the court must be informed immediately if the case is settled by agreement before the hearing date.
- 5** No party may rely at the hearing on any report from an expert unless express permission has been granted by the court beforehand. Anyone wishing to rely on an expert must write to the court immediately on receipt of this Order and seek permission, giving an explanation why the assistance of an expert is necessary.

NOTE: Failure to comply with the directions may result in the case being adjourned and in the party at fault having to pay costs. The parties are encouraged always to try to settle the case by negotiating with each other. The court must be informed immediately if the case is settled before the hearing.

Appendix C

SPECIAL DIRECTIONS

The _____ must clarify his case.
He must do this by delivering to the court office and to the _____ no
later than _____
[a list of _____]
[details of _____]
The _____ must allow the _____ to inspect by
appointment within _____ days of receiving a request to do so.
The hearing will not take place at the court but at _____ .
The _____ must bring to court at the hearing the _____ .
Signed statements setting out the evidence of all witnesses on whom each party intends to rely
must be prepared and copies included in the documents mentioned in paragraph 1. This
includes the evidence of the parties themselves and of any other witness, whether or not he is
going to come to court to give evidence.
The court may decide not to take into account a document [or video] or the evidence of a
witness if these directions have not been complied with.
If he does not [do so] [_____] his [Claim][Defence] [and
Counterclaim] will be struck out and (specify consequence).
It appears to the court that expert evidence is necessary on the issue
of _____ and that that evidence should be given by a single expert to be
instructed by the parties jointly. If the parties cannot agree about who to choose and what
arrangements to make about paying his fee, either party MUST apply to the court for further
directions. The evidence is to be given in the form of a written report. Either party may ask the
expert questions and must then send copies of the questions and replies to the other party and
to the court. Oral expert evidence may be allowed in exceptional circumstances but only after a
further order of the court. Attention is drawn to the limit of £200 on expert's fees that may be
recovered.
If either party intends to show a video as evidence he must –
(a) contact the court at once to make arrangements for him to do so, because the court may not
have the necessary equipment, and
(b) provide the other party with a copy of the video or the opportunity to see it at
least _____ days before the hearing.