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SMALL CLAIMS GUIDE

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10/2014

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SMALL CLAIMS GENERALLY

This guide is designed to explain to you what a Small Claims is, how it is prepared for, how it is ultimately conducted and the various ways you can deal with it.

WHAT ARE SMALL CLAIMS?

When a County Court receives a defence in a case where the amount claimed is less than £10,000.00, the action is usually referred to Small Claims, unless the case is very unusual involving a very difficult, complex or unusual question of law, or the case itself is so immensely complicated.

The purpose of a Small Claims hearing is to discourage the parties employing Solicitors where the value of the Claim is disproportionate to the costs of employing Solicitors. The way the Court Rules achieve this is by making it a term of the Small Claim that no costs are ever awarded except for three small exceptions (see page 2 on costs). Small Claims hearings in the County Court are informal compared with a full Court Trial but they are not a free for all. Each County Court in the country deals with Small Claims under the same rules but in enforcing and applying those rules, the different Courts have developed their own way of dealing with Small Claims within their jurisdiction. Therefore this manual can only generalise on the points covered and not all points will be totally relevant to the particular Court in which your case is to be conducted.

Unless there are special circumstances relating to your Claim, the case will be conducted in the Defendant's local County Court.

Normally the Small Claims hearing would be conducted before a District Judge. The Judge will sit at the head of a long table and the opposing parties and their witnesses will sit either side; the Claimant to the left and the Defendant to the right. The Judge would not normally wear his formal Court robes. The Judge will then peruse each sides documents, listen to their evidence and make his decision (the award of Judgment).

There is a lot of rough justice involved in Small Claims and there is a limited right of appeal against the District Judge's award. This must be borne in mind when embarking upon a Small Claim, as of course the District Judge could find against you as well as for you. The outcome of a case can never be guaranteed - no matter how strong you feel you case might be and how weak you believe the Defendant's defence is.

To succeed you need to be able to discharge the civil burden of proof, to establish your case on the balance of probability. This means satisfying the District Judge that your version of events is at least 51% better than the Defendant's.

More and more frequently the Court will insist on the parties going through mediation before the matter can be heard at a Small Claims Hearing.

Should you unreasonably disagree to go through mediation the Court can penalise you by disallowing you your costs even if you win.

The aim of going through mediation is to enable the parties to come to an amicable settlement without having to utilise the Court's already stretched resources.

THE “NO COSTS” RULE

This is one of the most important features of a Small Claims hearing, as it will have a great bearing on whether you decide to proceed with the case or not.

Basically, no Solicitors charges will be allowed, with the exception of: -

a. **Fixed Costs & Fees**

These are the costs stated in the original County Court Claim form comprising our costs, the Court fee (which sums you have already been invoiced for) and the Hearing fee.

b. **Enforcement Costs**

Should you be successful and find that the Defendant does not comply with the Court Order (award of Judgment) stating he must pay you the debt, costs and interest, you may have to take steps such as instructing the Bailiff to recover your money. The costs of such enforcement action would be recoverable from the Defendant if the enforcement was ultimately successful.

c. **Other costs awarded at the Courts discretion**

The District Judge hearing the Small Claims hearing has authority to order the party who loses to pay costs in addition to a. and b. referred to above, if there has been unreasonable conduct on that party’s behalf in relation to the proceedings or the Claim. This rule can work in your favour if the Defendant is acting totally unreasonably in defending the action. Please note the Court takes the view that a Defendant has a right to defend the action and to be heard on the matter. Therefore, the mere fact that he is not successful and that you win the case does not mean he has acted unreasonably. Please also be aware that the rule can act to your detriment, if the Court decides you have acted unreasonably in either your conduct of the case or the nature of the Claim. A clear example of the rule working against you would be in a situation where you instruct us to issue proceedings against the wrong Defendant. In such cases your conduct may be treated as being unreasonable and the case would be struck-out with costs against you.

As against the Defendant, the Court may treat the Defendant as being unreasonable if it is shown he has simply filed with the Court a “bogus” Defence in an attempt to play for time.

Fees and expenses you have paid to witnesses to attend the Small Claims hearing may be recoverable from the Defendant if your case is successful. You are initially responsible for paying any witness expenses and loss of earnings, but if you win the case you can claim these off the Defendant. The sum for loss of earnings or loss of holiday has an upper limit per day together with reasonable travel expenses.

Unfortunately, for these reasons it can mean that while you might have the merits on your side, it can be uneconomical to pursue the matter through the Small Claims procedure. It is clearly important that we outline this to you at this stage, so that you understand that a successful Small Claim will not allow you to recoup all the costs that you will have to meet in proceeding to Small Claims and so your case is conducted from this point on entirely at your Company’s expense. This is something that must be borne in mind when giving us instructions. Conversely the Defendant’s case will be conducted from this point on, entirely at his expense. The likely expense to you of the Small Claims hearing, when compared to the amount of the Claim, could be the single most important factor in making your decision as to how and indeed whether to proceed.

You must now take a conscious commercial decision whether to proceed, firstly in view of the “no-costs” rule discussed on page 2 and secondly, in view of the risk factor involved when embarking on any course of litigation.

THERE IS NO SUCH THING AS AN OPEN AND SHUT CASE.

We cannot predict the result for you. The result can never be guaranteed, as at the last minute the Defendant could produce a witness or some piece of evidence which make a Judge decide in his favour. Remember you have to prove your claim on the balance of probability.

THE DEFENDANT'S POSITION

It is worthwhile remembering of course that to an extent, the Defendant is in the same position. It is going to cost him time, money and effort if he forces you to take the matter to Small Claims hearing, but he does have the advantage of knowing that unless his behaviour is deemed by the Court to be unreasonable, he will not be ordered to pay your costs involved in the preparation for and the conduct of the hearing, even if you are totally successful in your Claim.

You may well ask, if the Defendant is running the same risk why he is not frightened into paying up. The following are four possible answers: -

A. **He cannot pay**

If the Defendant is in a position that he cannot pay, then you must assess whether he will have the ability to pay at the end of the action and if not, whether he has any assets that you can take enforcement action against such as a house. Trying to obtain this information to help you make such an assessment can be near impossible, as the information can be so difficult to obtain, particularly if the debtor is not known to you personally.

B. **He does not understand the position about costs and therefore does not understand the true risk involved.**

It can happen that a Defendant does not understand his position about costs. He may not have the opportunity to consult with a Solicitor for a long discussion about his case and the associated question of costs.

C. **He may genuinely believe you are wrong**

The third case where the Defendant genuinely believes you are wrong is something you may be able to take practical steps to deal with. You can telephone him. You can arrange to meet him for a discussion. You can ask him to see one of your Company's Representatives to try to sort it out. You can consider mediation.

D. **HE DOES NOT INTEND TO PAY YOU - WIN, LOSE OR DRAW**

More and more frequently nowadays, you can find you are dealing with a "man of straw". If your Defendant is a Company that is an empty shell (in name only) then the person behind the operation will just drop the Company as and when it suits him to do so. You must be sure at this stage that your Defendant, whether a Company, a Firm or an individual, has the ability to pay and will still be around with the ability to pay when the day of Judgment comes. A Judgment against a man of straw is not worth the paper that it is written on.

DECIDE WHETHER TO "GET OUT" NOW

You may be able to deal with this action now by coming to a negotiated settlement with the Defendant. For example, you may decide to accept a lesser sum than that due to you with each party paying their own costs or you may decide to withdraw the action totally, again with each party bearing own costs.

If you have paid the Hearing Fee, this will be refunded in full PROVIDED you notify the court within no less than 7 days before the hearing date.

PLEASE NOTE – You cannot simply ignore the action in the hope it will go away. If you want to withdraw at this stage, this must be by way of a negotiated withdrawal on the understanding each party is to bear their own costs. If the hearing is not dealt with the Defendant could attend and seek an order for costs against you and Judgment on its Counterclaim if they have filed one.

Negotiation

There is nothing to stop you, even at this stage of the proceedings, either meeting with or telephoning the Defendant to discuss the case generally with a view to settling the matter out of Court. You must remember to tell your opponent you are speaking "without prejudice" to the case which means that anything you say cannot be referred to later at the Small Claims hearing. You should also take into account the costs element of the case. Most negotiated settlements are effected on the basis that each party bears their own costs, which would mean your Company being responsible not only for our costs in dealing with the matter, but also the fixed costs on the issue of the proceedings, for which you have already been invoiced. If you want some other agreement on costs you must make this clear to the Defendant.

Negotiation is similar to a poker game. You should never allow your opponent to see your cards or know you are worried about the final outcome, but bluff the Defendant as to your position.

Settlement agreed

If settlement is reached after the matter has been listed for a Small Claims hearing both yourselves and the Defendant should write to the Court confirming the terms of the agreement reached and request the hearing be vacated.

ALTERNATIVE TO NEGOTIATED SETTLEMENT

If you do not wish to negotiate a settlement or should negotiations be unsuccessful and you still wish to withdraw from the proceedings, you can serve a "Notice of Discontinuance". This can be downloaded from the Courts website under their "Court Form Finder" but we must warn you that upon issuing this Notice, the Defendant is automatically entitled to recover their costs in dealing with the case. If the costs are not agreed, the Defendant can apply to the Court to assess their costs, this will inevitably increase the costs.

However, the proceedings are ended upon service of the Notice of Discontinuance and no further costs will be incurred.

LIST OF DOCUMENTS

If a direction has been given that documentation must be forwarded to the Court and other party(s), it means that each party must make a list of every relevant document in the case upon which they intend to rely on and serve it on the other side so that at the Small Claims hearing, no side is taken by surprise.

You should prepare your documentation and divide your documents up into two lists: -

(a) All the documents which are just between you and us (correspondence, statements made by witnesses, things which are confidential between us) put in one list and mark it, “not to be disclosed”.

(b) Then put all the documents which relate to the case, which you think may be relevant and may have to be relied upon, in another list and mark it “documents to be disclosed”. This list would include all order forms, delivery notes, invoices credit notes, purchase ledger, sales ledger, statement of account, monthly account statements, ledgers between the parties, agreements, contract documents, standard terms and conditions – anything like that. You should not include any Without Prejudice correspondence – this is when an attempt to settle has been made.

If you have any doubts as to whether a document should be in the “to be disclosed” or “not to be disclosed” category, put them in a separate bundle with a question mark on top.

(c) Finally, there are some documents which you may have had in your possession which are relevant to the claim, which you no longer have in your possession. For example, you may have sent invoices but no longer have a copy. State the nature of the document and its date in the letter.

When you supply documents please make sure they are the clearest copies you can supply. They will have to be photocopied and they can only produce good quality copies if your copies are good.

If you are sending a copy of a contract which has terms and conditions on the back, be sure that those terms and conditions are photocopied.

If you wish to compile the list of documents for example, you will need to get all your documents to be disclosed together (as above) place these in date order, number each page and write or type a contents list e.g.:-

1. Copy Claimants invoice number 99283 dated 20th January 20__
2. Copy Claimant delivery note number 789 dated 24th January 20__

Copies of your list and documents should be forwarded to the Court and Defendant/Solicitors within the time limits specified on the Courts directions not less that 14 days before the Hearing.

The original documents **must** be taken to the hearing.

IMPORTANT NOTE:- THE COURT WILL IMPLEMENT A STRICT TIME LIMIT WITHIN WHICH THE LIST OF DOCUMENTS MUST BE FORWARDED TO THE COURT CONFIRMATION OF WHICH WILL BE SHOWN ON THE COURTS DIRECTIONS. FAILURE TO FILE DOCUMENTATION WITHIN THE SPECIFIED TIME CAN RESULT IN COSTS PENALTIES.

WITNESSES & WITNESS STATEMENTS

Some Courts order such statements to be prepared and are either simply filed with the Court before the hearing or the Court may order their simultaneous exchange with the other party, so that each party is aware of the other's case before the hearing and knows what is going to be said.

Such a statement should be prepared and signed by each of the witnesses you intend to rely on at the hearing. To keep legal costs to a minimum, in view of the "no-costs" rule described earlier, you should attend to preparing these and send the prepared, signed and dated statement as soon as possible (see page 16). At the foot of your witness statement you will need to endorse and sign a Statement of Truth, the wording for which is shown on the draft Witness Statement on page 17. Should you make a false statement or cause or allow a false statement to be made in a document endorsed with a Statement of Truth, this is in contempt of Court, a conviction for which could carry a prison sentence, please see full note regarding Statements of Truth on page 11.

As soon as you receive notice of the Small Claims hearing date, you must immediately check with each of your witnesses to confirm they are available to attend Court on that date on your behalf. If any witnesses cannot attend, they can prepare a Witness Statement to be relied on in their absence. However if it is imperative that this witness should be at the hearing in person, you should immediately inform the Court and the Defendant of any further dates which would be unsuitable so that you can try to have the hearing adjourned to a date when all your witnesses can attend.

If the Defendant doesn't agree you may have to make a formal application to the Court. If you have any doubt whatsoever with regard to any of your witnesses actually attending Court on the relevant date and time, you must apply immediately to the Court for an Order compelling such a witness to attend. You can appreciate, it would not be worthwhile to proceed with a case where, for example, the Defendant is alleging misrepresentation by your Salesman and he cannot attend, because the Salesman is the only person who can refute this. Your Salesman may have left your employment and may now be working for another Company, possibly a rival. You will appreciate he is no longer personally involved and is not interested in whether you win or lose. In such a case, you will see you will need to take out a Witness Summons to compel him to attend. Only you know your witnesses and their characteristics, strengths and weaknesses and whether they will assist your case.

PLEASE SEE NOTE REGARDING STATEMENTS OF TRUTH ON PAGE 11.

A USEFUL CHECKLIST TO BE USED BEFORE THE FINAL HEARING

1. DOES THE PARTICULARS OF CLAIM NEED AMENDING?

As you are aware, this firm deals with high volume, Company to Company, debt collecting. To enable us to conduct such actions, all our Particulars of Claim are computer generated and generalised in nature. Whilst this is perfectly sufficient for the majority of cases, some times it is necessary to expand on your Claim, to plead issues with more detail. If you feel your Claim has special points in its favour, this is a step you may have to consider as the Judge will only allow you to conduct the case on specific points shown in your Particulars of Claim. There will be costs involved for making such an application to amend the Particulars of Claim, the details of which you will be advised upon on receipt of your request.

2. DOES ANOTHER DOCUMENT NEED TO BE SERVED ON MY BEHALF?

You may feel that a formal reply to the Defendant's Defence is needed to clarify issues.

3. HAVE I CONTACTED ALL RELEVANT WITNESSES AND OBTAINED THEIR STATEMENTS AND NOTIFIED THEM OF THE HEARING DATE?

The burden of proof in a Court case is "he who alleges must prove". In practice, this means you must be able to prove, either by documents, or by the oral evidence your witnesses give, every fact alleged in your Particulars of Claim except those facts formally admitted and agreed by the Defendant. Give consideration to this point to ensure your witnesses and documents cover all relevant points and any necessary witness summons has been issued.

4. HAVE I DISCLOSED ALL DOCUMENTS I INTEND TO RELY ON AT THE HEARING?

If you have forgotten one important document from your list, you would normally not be able to refer to it at the hearing. However a supplemental list enclosing this document can be forwarded to the Court and Defendant if this is noted prior to the hearing.

5. HAVE I FILED THE NOTICE OF CHANGE? (page 19)

This is essential if you are representing yourself.

6. HAVE I CONSIDERED THAT THE DEFENDANT MAY BE REPRESENTED BY A SOLICITOR? (See cautionary note 10)

7. HAVE ALL THE PAPERS UPON WHICH I INTEND TO RELY BEEN SIGNED WITH A STATEMENT OF TRUTH? (See note on Statements of Truth page 11)

For your convenience, a concise version of this checklist appears on page 15. You may care to copy this and staple it to your file to check off each point as it has been dealt with.

THE METHODS OF REPRESENTATION

This guide explains the two different approaches which you can adopt in relation to the Small Claims hearing. For Limited Companies, please see the additional note below. We have also provided you with contact details of a firm of Solicitors should you decide you would prefer to be represented/to assist you in preparing your case for Small Claims. Please do bear in mind our advice on page 2 regarding the "No Costs Rule".

1. SELF REPRESENTATION BY ATTENDANCE AT THE HEARING

This assumes that you are to attend at the Small Claims hearing. By assuming conduct of this matter, there will be no further costs to you other than your own time and expenses.

As you may be aware the Small Claims procedure is specifically designed to allow personal representation at the hearing and to assist you, we would refer you to the Note to Layman, on page 13, which lets you know how to conduct the hearing.

Please ensure that whoever you are sending to Court to represent you has read this note and has looked at all the Court documents, and is familiar with every aspect of the case and allegations in the Defence he or she is likely to encounter when faced by the Defendant. Your representative should also have read through the check list on pages 7 and 15 and be content each point has been covered. Obviously the person who is elected to go to Court must have first hand knowledge of the case and issues involved. There is no point sending, for example: a Branch Manager or someone in authority who was not directly involved with the matter, as his evidence would not be as acceptable or as convincing as perhaps the representative who sold the goods, the van driver who delivered them, or the engineer who carried out the work.

You could send as many witnesses to give evidence as thought necessary to prove your case and nominate one of them to actually take control and lead the evidence, which could be a supervisor or manager. Should any witness/s not be available to attend alongside your representative you may wish for them to draft a witness statement see page 6, 16 and 17.

Notice of Change

As we were on the Court record as acting on your behalf, the Court may refuse to hear your representative unless you have already placed yourself on the Court record, instead of The Thomas Higgins Partnership. It is a very simple procedure and involves you completing a "Notice of Change", a sample appears on page 19. This document must be sent to the Court and Defendant/Solicitors prior to the hearing. This will then put you on the Court record and all future notices and documents regarding the case will be sent to you rather than us.

WHERE REPRESENTATION IS BY A LIMITED COMPANY'S EMPLOYEE

There are strict criteria which are required to be met when a Limited Company intends to represent itself in Court.

In order to represent your company at the hearing it is essential that the following information is provided to the Court in good time prior to the application/Hearing.

A written statement containing the following information should be provided to the Court:-
Where a party is a company or other corporation and is represented at a Hearing by a Director or other officer or employee, the written statement should contain the following additional information:

1) The name and address of each advocate.

2) His qualification or entitlement to act as an advocate on behalf of the company.

3) The party for whom he so acts.

4) The full name of the Company or Corporation as stated in its certificate of registration.

5) The registered number of the Company or Corporation.

6) The position or office in the Company or Corporation held by the representative.

7) The date and the manner in which the representative was authorised to act for the Company or Corporation e.g. (a) written authority from the Managing Director; or (b) board resolution dated.

Please ensure that this information is provided to the Court so as to avoid any problem when you attend the Court to represent the Company.

PLEASE SEE CAUTIONARY NOTE ON PAGE 10

2. SELF REPRESENTATION BY PAPER TRIAL

This option may appeal where the sum involved is nominal (less than £1000.00), the Court is too great a distance to travel and it is not cost effective for you to attend personally or to opt for full legal representation.

Again, there will be no further charges and you will be responsible for complying with all the Court's directions.

You will need to prepare your List of Documents (page 5) and Witness Statement, which must include a Statement of Truth (see pages 16 and 17), which should be a full history of events and enclose supporting numbered documentation. A copy of both documents must be sent to the Court and Defendant/Solicitors at least 14 days prior to the hearing.

Should you make a false statement or cause or allow a false statement to be made in a document endorsed with a Statement of Truth this is in contempt of Court, a conviction for which could carry a prison sentence see page 11.

IMPORTANT.

If you do not attend at Court at the time of the hearing your claim will very likely be struck out. Therefore to take advantage of this paper trial option and if you know you are not going to be in attendance, then at least 7 days prior to the hearing you **MUST** do the following:

a) State in your letter that you will not be in attendance at Court

Say that this notice is being given in accordance with Civil Procedure Rules 27.9 and that you wish the Court to take into account the written evidence which you have submitted as being your representation in relation to the hearing.

CAUTIONARY NOTE

This is a high risk option, as you will not be in attendance and therefore unable to answer any questions the district judge may have or to counter any matters raised by the defendant. There is also a risk that you papers will not be put on the court file and therefore the district judge will be unaware of your submission.

This option is intended to be a practical approach to an economical problem.

PLEASE SEE CAUTIONARY NOTE below & NOTE REGARDING STATEMENTS OF TRUTH ON PAGE 11

There is a further disadvantage with this option. If the Defendant is represented by Solicitors, their Solicitor may decide to appear at the Small Claims hearing and conduct the case on the Defendant's behalf. A Solicitor may be able to throw some doubt on a Written Submission to such an extent you lose the case, no matter how clear cut the facts and without someone there to counter any allegations made, you are prejudicing your chances of winning. In addition, with regard to this option and self-representation – you will appreciate your representative, a lay person, may be totally intimidated when faced with an aggressive Solicitor on the other side and not present your case correctly, or fail to give the full evidence, which again would lessen your chances of success.

For these reasons, whenever the Defendant is to be represented at the hearing by a Solicitor, to start the hearing with an equal chance of success, you should seriously consider option 1 – full legal service.

There is a lot of rough justice involved in Small Claims and there is a limited right of appeal, no matter which option you choose.

SOLICITOR REPRESENTATION

If you find that you do require or prefer to be represented at the Small Claims hearing and/or require assistance in preparing your case, we can the details of litigation specialists who generally charge a non-recoverable fee between £750.00 - £1850 plus VAT depending on the value and complexity of the case. They will find the best solution for you and advise on the best way to achieve a settlement.

Alternatively you can instruct a Firm of Solicitors of your own choice. You will need to negotiate their charges directly, bearing in mind they are usually not recoverable.

STATEMENT OF TRUTH

In certain circumstances, Statements of Truth have to be endorsed on documents when proceedings are issued. Documents to be verified by a Statement of Truth include any proceedings issued in the High Court or County Court, some applications made to the Court and all Witness Statements.

Statements of Truth should be signed by a representative of your Company. The signing of a Statement of Truth does have serious consequences;

FALSE STATEMENTS – we are obliged to inform you that proceedings for contempt of Court may be brought against any person if he makes or causes to be made a false statement in a document which is verified by a Statement of Truth without an honest belief in it's truth. Such proceedings for contempt of Court may be brought by the Attorney General or with the permission of the Court. Contempt of Court can be punished by a prison sentence – the maximum penalty being a fixed term not exceeding 2 years.

It is of course almost inconceivable that in any debt collection matter that you would be instructing us that any false statements would be made. However we are obliged by the Rules of the Court to bring to every Client's attention the consequences of signing any false Statement of Truth.

THE AWARD OF JUDGMENT

Whatever method of representation you elect for, the District Judge who hears the case will state his decision (Judgment/award) verbally at the hearing and give his reasons for it.

If you are successful in your Claim you may wish, if representing yourself, to ask the Judge for your witness expenses, in addition to the fixed costs on the Claim and even for your full legal costs if you believe the Defendant has acted unreasonably. (see “no-costs” rule – page 2). You may also ask for interest. The interest will be shown on the Claim Form. You should request that any interest accrued since the issue date of the Claim (the daily rate will also be shown on the Claim Form) be added to the award.

The Judge will then state the full amount payable. It is then the duty of the Court to draw up a formal order in the terms of the Judgment or Award, stating the full amount payable, the date payment is due or specifying details of instalments. It is common for a Court to take anything up to four weeks to send the formal orders out, as they are under tremendous pressure and may have a huge backlog of work. The Order will be sent to you and not to us.

If the Defendant defaults on payment you are entitled to instruct the County Court Bailiff/High Court Enforcement Officer to attempt to recover the money on your behalf. We can, at this stage should you wish, take back over the matter to deal with enforcement or alternatively you can retain conduct and obtain the necessary forms from the Court yourselves.

Similarly if the award is against you, and you have lost the case, there may be an award against you on a Counterclaim and if you do not pay the monies due to the Defendant under the terms of the Judgment within the specified time, the Defendant is entitled to instruct the Bailiff to levy execution against you.

Please note there is a limited right of appeal from a Small Claims hearing in normal circumstances but under the Civil Procedure Rules, a Judge may, if he thinks fit - on an application made to him - set aside the award. Notice of that application must be made within 14 days of the hearing. This will not be a re-hearing and to be successful you must show an error of law or misconduct on the Judge’s behalf.

NOTE TO LAYMEN AS TO WHAT THEY SHOULD DO AT A SMALL CLAIMS HEARING TO ENABLE THEM TO CONDUCT THE CASE THEMSELVES AND EXPLAIN THE PROBLEMS ASSOCIATED WITH SMALL CLAIMS.

Small Claims hearings in the County Court are informal compared with Court proceedings but they are not a free for all. There as some rules and also there are things you can do to help your case. Please read this note before your Small Claims hearing and familiarise yourself with its contents and be sure to take everything connected with your case to Court with you when you go. If it's your first experience as advocate don't worry about it. The District Judges are polite, helpful and usually willing to do their best to help you present your case in its best light. You don't need to know any law and a formal concise courteous approach will be much appreciated by the District Judge. Good Luck.

DISTRICT JUDGE

Call him 'Sir' or if female 'Ma'am'. S/He is a Solicitor or Barrister. He may run the case himself or leave it to the parties. If he runs it himself do what he says. If he leaves it to you do it as set out below. He might have read the file on the case but don't assume he has. He has a large discretion as to how to handle the case. Please note District Judges tend to be formal, conservative and unostentatious and it is therefore advisable for you to dress and behave in such a formal conservative and unostentatious way when addressing them.

WHAT TO TAKE WITH YOU

1. Everything connected with the case – original documents, letters, invoices, the particulars of claim and the defence – photographs, plans, memos, anything at all connected to the case. These should all be included in the list of documents. All Witness Statements.

2. A notepad and a pen or pencil.

ORDER OF DOING THINGS

1.1 You start by telling the District Judge briefly about this case. (Some District Judges dispense with this).

1.2 E.G. 'I am the credit controller for the Claimant and we are claiming the sum of £350.00 which is the price of office equipment sold by us to the Defendant. We sent our invoice on the 15th May and the Defendant still have not paid. The reason they give is that the equipment was faulty but that is not true, they just don't now how to use it.

2.1 Generally you do not give your evidence on oath.

2.2 You must tell the District Judge absolutely everything you want him to know, both in support of your own case and against the Defendant's case. If the Defendant has said things in his defence or in letters which you do not accept, refer to the defence or the letter and tell the District Judge what you do not accept and the reason why you don't accept it.

2.3 The Defendant can question you after you have given evidence.

2.4 Always answer truthfully.

2.5 Try to keep your answers short.

2.6 Answer courteously however the question is put. NEVER EVER LOSE YOUR TEMPER. DOING SO IS GIVING A VALUABLE ADVANTAGE TO YOUR OPPONENT.

2.7 After the Defendant has questioned you, you have the opportunity to deal with any matters raised in his cross examination that you feel are not adequately dealt with by your answers to the Defendant's questions.

3. Call your own witnesses, keep them to the point and as short as practicable. Remember to let your witnesses know when the hearing is and ensure they have a copy of their statement.

3.1 Try not to ask leading questions e.g. instead of asking "on the 20th April did you deliver a brand new fragile electronic typewriter to the Defendant's premises and observe that the 25 stone typist was attacking the previous manual machine like a gorilla?" Instead ask a number of questions that do not suggest their answers such as "did you make any deliveries on the 20th April? What did you deliver? Where to? Did you notice anything unusual when you were there? Keep quiet while the Defendant asks questions of your witnesses. Don't object to anything – you are not an American Attorney – the District Judge will stop anything he thinks is unfair.

3.2 You can ask more questions after the Defendant has finished questioning your witness but only about matters arising out of the Defendant's questioning. If your witness has made a hash of his evidence, resist the temptation to try and get the toothpaste back in the tube – it rarely works. Better to get on with the next witness unless a simple question or two can clear up whatever is worrying you.

4. After you have called your witnesses the Defendant can give evidence.

4.1 Make a note of what he says and in the margin jot down the questions you want to ask as you make the note.

4.2 Question the Defendant and his witness courteously no matter how he behaves. Put your version of the case to him. Don't expect him to burst into tears and confess all and don't comment at all on what he says as he is saying it. Remember the object is not to bully an admission out of him. It is just to put you own case and elicit any answers which you feel may discredit his case and highlight any inconsistencies.

4.3 Before you finish check your note to see if you have forgotten anything.

5. After the Defendant and his witnesses give evidence the Defendant is allowed to make a short speech to the District Judge summing up his evidence and his case. Keep quiet and don't interrupt him. Note what he says and in the margin jot down your own points as they occur to you.

5.1 This is the time for making comments. When you address the District Judge be concise and clear and still courteous. List your points. Run quickly through your notes of the Defendant's evidence and your notes of his speech before you finish. Don't forget as the Claimant the onus is on you to prove your case.

5.2 The District Judge will give a Judgment with reasons. Make a note of the District Judge's judgment. Start to make the note from when he starts speaking as he gives his reasons first and his decision last usually.

IF YOU WIN ask for the costs on the Claim, interest and Allocation fee, Hearing fee and also any witness expenses for your witnesses to cover travelling expenses and loss of wages etc. If you lose smile and keep quiet and wish him a polite good afternoon – you might come before him again in another debt collecting exercise next year.

If you are successful and win the case, in addition to the costs on the Claim, you could ask the District Judge to award further costs if you believe the Defendant has acted unreasonably in bringing the case to Court by defending your Claim. It will then be up to the District Judge whether such additional costs are given to you against the Defendant.

A USEFUL CHECKLIST

1. Do the Particulars of Claim deal sufficiently with my case or does it need amending?

2. Do any more documents need to be served on my behalf?

3. Have I seen all the Defendant's documents?

4. Have I obtained witness statements from all my witnesses and told them of the hearing date and time?

5. Have I disclosed all the documents I will be relying on at the hearing?

6. Have all deadlines given by the Court been met?

7. Have I filed the Notice of Change?

8. Is the Defendant represented by a Solicitor?

9. Have all papers upon which I intend to rely been signed with a Statement of Truth?
(see page 11)

IMPORTANT NOTES TO ASSIST IN DRAFTING A WITNESS STATEMENT

1. Keep your statement simple, clear and dispassionate. Set out the story in your own words.

2. State all the facts to prove your case, describe what happened in date order, with the earliest event set out first and annex any documents.

3. Keep solely to the point.

4. Never make personal remarks about the Defendant or his employee. If he is wrong then just say so – do not call him a liar or a maniac – you only need to prove your case - not that the Defendant is a crook or insane.

5. Try to break your statement up into short sections – huge unbroken paragraphs are less persuasive. Use many simple short sentences where possible rather than long and involved ones.

6. Use simple plain English with no jargon.

7. Number your paragraphs and pages (it makes it far easier for your statement to be referred to when questioning the Defendant about it and the District Judge will appreciate that).

8. State names of people followed by which Company they were from e.g. Joe Bloggs of the Defendant Company.

9. Always state dates things happened if known.

10. Refer to and enclose documentation to support your statement (documents should be numbered or lettered and referred to by their relevant number or letter e.g. the initials of the person making the Witness Statement and then numbered sequentially).

11. Ensure your Statement has been endorsed with a Statement of Truth see page 10.

12. Example copies of the lay out of a Witness Statement and Written Submission are shown on pages 17 and 18.

Party on Whose Behalf made: Claimant
Initials and Surname of the Witness:
Number of statement in relation to the Witness:
Identifying Initials and Number of each exhibit:
Date Statement was made:

IN THE COUNTY COURT at (insert Court) **CLAIM NO. (INSERT INFO HERE)**

BETWEEN

JOE BLOGGS LIMITED **(CLAIMANT)**

AND

JOHN SMITH(MALE) **(DEFENDANT)**

WITNESS STATEMENT OF (INSERT NAME)

I, (INSERT NAME) OF (INSERT ADDRESS) say as follows:-

1.

2.

3.

STATEMENT OF TRUTH

I believe that the facts stated in this Witness Statement are true.

……(SIGNATURE)

(NAME)
(POSITION IN THE COMPANY)
(DATE)

IN THE COUNTY COURT at (INSERT COURT) **CLAIM NO. (**INSERT NO.)

BETWEEN

JOE BLOGGS LIMITED **(CLAIMANT)**

AND

JOHN SMITH(MALE) **(DEFENDANT)**

NOTICE OF CHANGE OF SOLICITOR

Note : You should tick either box A or
B as appropriate **and** box C.
Complete details as necessary.

I (we) give notice that

A ☑ My Solicitor, Thomas Higgins Partnership of Lloyds Chambers, 19 - 21 Seaview Road, Wallasey, Wirral, CH45 4TH has ceased to act for me and I shall now be acting in person.

B ☐ We have been instructed to act on behalf of the Claimant in this Claim (in place of)

C ☐ I (we) have served notice of this change on every party to Claim (and on the former Solicitor).

Address to which documents about this Claim should be sent (including any reference)

If applicable

Telephone No.
Fax No.
DX No.
Postcode E-Mail

Signed …….. Position/office held …….
Claimant/Claimant's Solicitors If signing on behalf of firm/company

Date……..

The Court office at
is open between 10am and 2pm Monday to Friday. When corresponding with the Court, please address forms or letters to the Court Manager and quote Claim number.

Court Fees in Defended Actions

As your claim progresses, a Directions Fee will apply when allocated to one of the 3 tracks.

Where the debt is over £10,000, a Listing Questionnaire fee will be payable.

In addition there will be a Hearing Fee on a sliding scale depending on the value of the claim. A percentage of the Hearing fee **will be refunded** if your claim is settled or discontinued before the date fixed for the Hearing and sufficient notice is given to the Court.

The fees that apply are shown in the following table:-

DIRECTIONS FEES Within 14 days of the Court's Notice of Allocation to a Track (small claims, fast or multi track) being issued:- a) small claims track where debt is less than £1500 b) small claims track where the debt is between£1500- £10,000 c) fast track or multi track actions for debs over £10,000	 No fee £0.00 £0.00
LISTING QUESTIONNAIRE FEES For fast track or multi track actions, upon filing the Listing Questionnaire or within 14 days of the Court's Notice of the Trial date or week being issued	£110.00
HEARING FEES For small claims track actions, within 14 days of issue of the Court's Notice of the Small Claim Hearing Date:- a) where the debt does not exceed £300 b) where the debt exceeds £300 but does not exceed £500 c) where the debt exceeds £500 but does not exceed £1,000 d) where the debt exceeds £1,000 but does not exceed £1,500 e) where the debt exceeds £1,500 but does not exceed £3,000 f) where the debt exceeds £3,000 but does not exceed £10,000 For fast track and multi track actions, within 14 days of the Listing Fee shown above being paid, a further Hearing fee is payable:- a) For fast track actions £10,000 - £25,000 b) For multi track actions £25,000 plus	 £25.00 £55.00 £80.00 £110.00 £165.00 £325.00 £545.00 £1090.00
<u>Refund of Hearing fees</u> *For small claims track actions*:- If the Court receives notice from the party who paid the hearing fee that the action is settled or discontinued, at least 7 days before the Hearing date *For fast track or multi track actions*:- If an action settles or is discontinued after the Trial date has been set and written notice of that outcome is given to the Court by the party who paid the hearing fee, then the following refunds will apply:- a) If the Court is notified more than 28 days before the Trial date b) If the Court is notified 14 - 28 days before the Trial date c) If the Court is notified 7 – 14 days before the Trial date **IMPORTANT NOTE** **If you are considering settling/discontinuing the action, the sooner the court is informed the greater the refund you will get.**	 **100% refund** **100% refund** **75% refund** **50% refund**

ALTERNATIVE DISPUTE RESOLUTION (ADR)

WHAT IS ADR?

ADR is the collective term used for means of settling disputes with the help of a third party, in a non court related forum. ADR has become increasingly popular over the last few years and is actively encouraged by the Courts. Whilst the Courts cannot force parties to resolve matters by way of ADR, they will often Order that a matter be stayed (be put on hold) to allow parties to explore ADR, usually by mediation or arbitration. Failure to agree to undergo an ADR process may prejudice your case if you unreasonably refuse to attend and may result in you incurring cost penalties, imposed by the Judge.

SMALL CLAIMS MEDIATION SERVICE- Debts less than £10,000

Mediation is a way of negotiating a compromise with the help of an impartial third person. The courts provide a free mediation service to attempt to settle monetary claims before they go to Trial. The cost of using the service is covered by the court fees paid by the Claimant

It can be worth trying mediation, rather than proceed to a Trial because it can mean matters are dealt with more quickly. Mediation appointments are listed earlier than court hearings; a session can take about an hour and can take place over the telephone, rather than the parties having to travel to Court.

If the matter is concluded by a successful mediation, then you are entitled to a full refund of the Hearing Fee, providing you give at least seven days written notice to the Court, before the hearing date.

FAST TRACK AND MULTI TRACK MATTERS-Debts over £10,000

Whilst mediation is advocated by the courts as a possible means of resolving all disputes, a free service is not provided where your Claim is valued in excess of £10,000 and not allocated to the Small Claims Track. There is a list of experienced mediators who are accredited by the Civil Mediation Council available for all areas on the Ministry of Justice web site. Their fees which are payable privately are displayed on the web site. There is also the cost of venue hire to be considered on occasions and travel costs to attend at the Mediation itself.

It is important to note that whilst mediation is generally less expensive than going to Trial, success cannot be guaranteed. If the matter is not resolved at the Mediation, then the costs of the mediation will ordinarily not be recoverable, even if you are ultimately successful at Trial. Dispute resolution procedures may therefore increase your costs liability. However mediation does have its advantages. Many parties favour the informality and the speed at which a mediation can be arranged, rather than waiting on a distant Court date. A confidential meeting between the parties can enable frank discussions to take place and possibly salvage an on going commercial relationship. If a compromise can be reached, then the mediator will record the agreement reached in an Order which is then binding on the parties.

IT IS IMPORTANT TO REMEMBER THAT MEDIATION IS AVAILABLE AT ANY STAGE IN THE LITIGATION PROCESS. FURTHER DETAILS ARE AVAILABLE UPON REQUEST.

SHOULD YOU WISH TO MEDIATE YOUR DISPUTE, PLEASE NOTIFY US.

Published by the Thomas Higgins Partnership
Lloyds Chambers, 19 - 21 Seaview Road,
Wallasey CH45 4TH