



The Courts: small claims

Government Response to the
Constitutional Affairs
Select Committee's Report



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**Presented to Parliament
by the Secretary of State for Constitutional Affairs and Lord Chancellor**

**By Command of Her Majesty
February 2006**

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Introduction

1. The Government is grateful to the Constitutional Affairs Select Committee (CASC) and all those who gave evidence, for the time and effort they gave to exploring the operation of the small claims system which operates in the county court. We welcome the Report and the contribution it makes to raising awareness of this straightforward and informal procedure which assists a large number of litigants to pursue small monetary claims while at the same time highlighting areas which have potential for improvement.
2. The Select Committee primarily focused its Inquiry on the efficiency and effectiveness of the small claims procedure and whether it provided effective and proportionate access to justice, reaching a number of conclusions and making recommendations which we respond to below. We acknowledge the validity of many of the concerns expressed by the Committee. At the same time, we are grateful for the Committee's recognition that progress is being made in a number of areas.
3. The Government recognises the small claims system as an important part of the civil justice system and a means for litigants to pursue small monetary claims without the need for a legal practitioner. We continue to seek to improve the small claims process, in particular for the benefit of litigants in person. Recent innovations include a simplified allocation questionnaire for use in defended small claims and a tailored appellant's notice. Enhancing the information provided to litigants in HMCS leaflets has supported this work.

Summary

4. The Government welcomes the Committee's conclusion that the small claims system generally works well in providing a low cost, good quality procedure for large numbers of litigants and agree with the Committee that there is some potential for improvement.
5. The Government is committed to develop integrated and robust IT systems that meet the demands of a modern and efficient legal civil court system. Our business strategy sets out how we will use technology to improve the progression of cases, provide electronic access for court users and improve administrative efficiency. We start from a low technology platform, but current investment in improved infrastructure, electronic scheduling, centralised data and future plans to develop electronic service channels will provide us with the opportunity to streamline the process further.
6. The Government acknowledges that effective enforcement is an essential aspect of an effective justice system. We are taking forward measures to improve the effectiveness of the enforcement process, including:
 - widening access to charging orders;
 - fixed tables on attachment of earnings orders;
 - information sharing with other Departments.
7. The Government will continue to review as necessary the rules, procedures and information available to litigants so that they promote and retain the confidence of the judiciary, litigants and their representatives. We are committed to ensuring that the small claims process remains accessible to litigants in person and that the case track limits provide a proportionate and cost effective framework which reflects that aim.

Response to Recommendations

The small claims procedure provides an important avenue for consumers, businesses and other litigants to pursue claims with only a limited monetary value, in an informal environment, at low cost and at reasonable speed, without incurring disproportionate legal fees. (Paragraph 18)

8. The Government welcomes the Committee's support for the small claims procedure and its recognition of the benefits of this informal litigation process.

Provision of IT

The Department must place greater priority on providing adequate IT facilities to the county courts. While the provision of IT equipment and electronic documents management software might be expensive in the short term, there would be clear scope for greater efficiencies if the current paper based system could be at least partially replaced, and service to the public would be improved. (Paragraph 23)

9. The Government accepts the Committee's comments and agrees that there is a need to enhance IT facilities to improve customer service and efficiency generally. However, as the Committee acknowledges, there are financial constraints which dictate the speed and scope of progress that can be achieved in this area.
10. Our programme to roll out a modern IT infrastructure to our large civil courts should be completed by the end of March 2006. We are in the process of re-letting all our IT contracts and are in negotiations with new suppliers, so details of the scope and timetable for further developments is commercially sensitive.
11. Other initiatives under development or consideration include –
 - E-diary – an electronic diary system to support the listing of civil trials;
 - Possession Claim Online Project (PCOL) - an on-line service to issue claims in county courts for possession of residential property;
 - The 'SUPS' Project - pilots to upgrade our case management systems;
 - EFDM - a feasibility study for a Electronic Filing and Document Management system to enable users to submit case documents in electronic form and to provide court staff and judiciary the facility to view them on an electronic file.

Listing procedures

... Clearer warning to parties that their cases may not get on at the time they are requested to appear at court would at least have the effect of allowing parties better to organise their time and to avoid unrealistic expectations. (Paragraph 28)

12. The Government is grateful to the Committee for recognising the difficulties associated with listing cases. The system that the county courts operate at present has the support of the Association of District Judges and it has been found that overall it provides the best service to litigants. To ensure parties (particularly litigants in person) are aware of the effect of listing procedures, we have introduced a paragraph on notices of hearing, drawing attention to it. In light of the Committee's observations we will consider if more can be done in this respect.

Enforcement of judgments

We are pleased that the Department is coming forward with new ways for successful litigants to enforce their judgments. It is obvious that this has been an area of substantial weakness in the past and therefore the new measures should be introduced as expeditiously as possible. (Paragraph 38)

Given the considerable criticism of the current procedures, it is essential that the Department monitors the success of the new proposals once they have been introduced, to ensure that litigants gain proper access to justice and not simply unenforceable judgments which must reduce confidence in the entire civil justice system. (Paragraph 39)

13. The Government is aware of the frustration felt by litigants who have obtained judgment only to find that a judgment debtor either will not, or cannot, pay. Having an effective enforcement system is crucial to sustaining public confidence in civil justice and the Report sets out the measures which we are introducing to strengthen the enforcement processes. These include for example, an information sharing initiative, the aim of which is to give civil courts the opportunity to request information about a judgment debtor from the Department for Work and Pensions and HM Revenue and Customs.
14. We are waiting for parliamentary time to legislate on a number of these proposals. When we define the detail of the processes, we will ensure that where necessary monitoring procedures are built in.
15. We will continue to consider any initiatives that support creditors in enforcing judgments and tackle those litigants who seek to use the litigation process as a delaying tactic, having no intention of attending a hearing or seeking to delay or avoid paying a money judgment made against them.

The Small Claims limit: limits on claims for Personal Injury and Housing Disrepair

What almost all our witnesses agreed upon was that the most important issue was whether the parties were properly informed and advised before they came to court, rather than whether they were represented at court. (Paragraph 49)

16. The Government recognises that in order to provide access to justice it is necessary to ensure that litigants are provided with proper information and advice when bringing and responding to claims.
17. We have recently reviewed and updated our information leaflets. These provide litigants in person with information that enables them to weigh up the relative merits of pursuing and responding to claims without the need for legal representation. We will continue to ensure that our literature directs litigants to the free legal information, help and advice that is available from the Community Legal Service, Citizens Advice Service or consumer advice centres.
18. We are confident that the recently introduced small claims allocation questionnaire will further assist litigants in person in understanding what is required of them in preparing for the hearing and responding to the directions given by the judge.
19. The Government is particularly encouraged by the early success that we are having with the small claims support service piloted at Reading County Court. The service, launched in June 2005 and funded for a year, was set up specifically to help customers in small claims cases who do not have a solicitor. A dedicated support officer provides assistance on all facets of the small claims process, helping parties put their documents into order, explaining how the hearing is conducted and the intricacies of court etiquette. In addition to providing generic information and advice, it also encourages parties to resolve the dispute without the need of a hearing by dealing directly with the person, organisation or company they are in dispute with. As at the end of December 2005, the service had been used in 82 cases with 31 subsequently settling. The service is currently being evaluated and, if successful, will be made more widely available.
20. In seeking to build on the country's reputation as being a leader in the field of small claims litigation, the Government is considering a number of other options to enhance the process and accessibility to small claims litigation. In particular we are exploring ways to use new technology e.g. a web based system for navigating through the small claims process and the production of a DVD. These would provide an alternative for "leaflet shy" litigants and a means of broadening the scope of providing information in a modern and acceptable format. These initiatives are in the very early stages of consideration and progress will be dictated by feasibility and funding.

The Small Claims limits for personal injury and housing disrepair case are in need of reconsideration. It is plain that some minor injuries that were originally intended to fall within the small claims system and which have no medium to long term health implications for claimants, now fall outside the system. Claims for personal injuries which are worth less than £2,500 could be considered under the small claims system without unduly disadvantaging claimants. (Paragraph 54)

In order to give consistency of approach, it would be sensible if the limit for housing disrepair cases was raised by the same amount. When considering the housing disrepair limit, however, it will be essential to ensure that vulnerable tenants are not unduly disadvantaged by any change. Any such disadvantage in both types of case could be ameliorated by better provision of advice and support before the parties attended court. (Paragraph 55)

21. The Government has undertaken to consider all the case track limits. In doing so, it recognises that there are concerns about the potential lack of legal advice for claimants during the claims process if the small claims limit for personal injury is raised. It also recognises concerns that the processes and costs in lower value cases are often disproportionate. So in addition to considering the limits, the Government is working with stakeholders to find ways to make the claims process more timely, proportionate and cost-effective.
22. This work is in progress, and is being informed by information and representations from a range of different sources. The Select Committee's report has itself generated a number of further representations from interested individuals and organisations. The Government will consult on the proposals which emerge.

The European Small Claims Procedure

The European Small Claims Procedure could be of real benefit in cross border cases, but we are concerned that the claiming of disproportionate legal costs and the unrealistic low limits could undermine its value; furthermore, we see no reason to extend the European Small Claims Procedure to wholly domestic cases, where the existing system is available with lower cost risk and has been shown to work relatively well. (Paragraph 63)

23. The Government welcomes the Committee's support for the proposed European Small Claims Procedure and shares the Committee's concerns about disproportionate legal costs and unrealistically low limits.
24. The Government, during its presidency of the European Council obtained agreement on the need for proportionate costs and to limit the procedure to cross-border cases. The issue of the limit for the procedure is still under discussion in the Council Working Group. The Government will continue to press for a procedure which is practical, straightforward, fast and effective.



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