

## Part 27 – The Small Claims Track

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### Scope of this Part

#### 27.1

(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 26.9 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 or to

a dwelling where the claim is under the Renting Homes (Wales) Act 2016 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 £10,000 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 £10,000 where the claim for damages for personal injuries is not more than the relevant value specified in rule 26.9(1)(a)(ii)(aa), (bb) or (cc), being £5,000, £1,000 or £1,500, respectively; and
- any claim which includes a claim by a tenant of residential premises against ~~their~~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);
- any claim which includes a claim under the Renting Home (Wales) Act 2016 by a contract-holder of a dwelling against their landlord for repairs or other work to the dwelling 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).

Extent to which other Parts apply

## **27.2**

(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) , rule 39.8 (communications with the court) and rule 39.9 (recording and transcription of proceedings).

(2) The other Parts of these Rules apply to small claims except to the extent that a rule or a practice direction under this Part limits such application.

(2A) A rule or practice direction may, in relation to a specified type of small claim—

- (a) require or permit the use of the procedure set out in this Part; and

(b) disapply or modify any of the rules set out in this Part.

(3) The court of its own initiative may order a party to provide further information if it considers it appropriate to do so.

#### Court's power to grant a final remedy

**27.3** 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, the intermediate track or the multi-track.

#### Preparation for the hearing

##### **27.4**

(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 direct that~~ the claim ~~be decided~~ 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~~ ~~they~~ ~~intends~~ to rely at the hearing; and

(ii) any other standard directions set out in Practice Direction 27A; and

(b) 'special directions' means directions given in addition to or instead of the standard directions.

#### Experts

**27.5** 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)

Preliminary hearing

**27.6**

(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 ~~they~~ understands what ~~they~~ 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.

Power of court to add to, vary or revoke directions

**27.7** The court may add to, vary or revoke directions.

Conduct of the hearing

**27.8**

(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.

Non-attendance of parties at a final hearing

**27.9**

- (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 ~~they~~ will not attend;
  - (b) has served on the other party at least 7 days before the hearing date any other documents which ~~they~~ ~~have~~ ~~has~~ filed with the court; and
  - (c) has, in ~~their~~ ~~his~~ written notice, requested the court to decide the claim in ~~their~~ ~~his~~ absence and has confirmed ~~their~~ ~~his~~ compliance with paragraphs (a) and (b) above, the court will take into account that party's statement of case and any other documents ~~they~~ ~~he~~ ~~have~~ ~~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 the claim and any defence and counterclaim.

~~Disposal~~ Deciding the claim without a hearing

**27.10**

~~(1) The court may, if all parties agree, deal with the claim without a hearing.~~

(1) If the court directs that the claim is to be decided without a hearing, the court is to fix a date upon which a judge is to consider the written evidence filed by the parties

and give judgment (“the decision date”) and give the parties at least 21 days’ notice of the decision date.

(2) The court –

(a) must direct that each party must, no later than 14 days before the decision date, file and serve on every other party copies of all documents (including any expert’s report) on which they intend to rely; and

(b) may give any other directions that it considers appropriate in the circumstances of the case.

(3) If any party wishes to object to the claim being decided without a hearing, they may file and serve brief objections no later than 7 days before the decision date.

(4) If a party files objections under paragraph (3), then, on the decision date, the judge must consider afresh whether the claim is suitable to be decided without a hearing, and may either decide the claim on the papers or make alternative directions.

Setting judgment aside and re-hearing

#### **27.11**

(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 ~~them~~**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 –

(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 the judgment.

(5) A party may not apply to set aside 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~~ have been previously revoked.

Costs on the small claims track

**27.14**

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

(Rule 46.13 makes 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, calculated in accordance with Table 2 in Practice Direction 45;

(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 27A 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 27A 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 27A for an expert's fees;

(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; and

(h) the applicable Stage 1 and, where relevant, the Stage 2 fixed costs in Table 10 and Table 11 in Practice Direction 45 where –

(i) the claim was within the scope of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol') or the Pre-action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims ('the EL/PL Protocol');

(ii) the claimant reasonably believed that the claim was valued at more than the small claims track limit in accordance with paragraph 4.1(4) of the relevant Protocol; and

(iii) the defendant admitted liability under the process set out in the relevant Protocol; but

(iv) the defendant did not pay those Stage 1 and, where relevant, Stage 2 fixed costs; and

(i) in an appeal, the cost of any approved transcript reasonably incurred.

(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 the court has directed that the claim be decided without a hearing, any party wishing to claim costs under this rule must file details of the costs claimed no later than 7 days before the decision date as defined in rule 27.10.

Claim re-allocated from the small claims track to another track

### **27.15**

(1) Where a claim is allocated to the small claims track and subsequently re-allocated to another track, the costs which may be allowed are those applicable to the track to which the claim is reallocated, as if the claim been allocated to that track at the outset.

(2) Where a claim is reallocated to the small claims track from the multi-track, rule 27.14 shall apply to the period before, as well as after, reallocation, except where a court order or a rule or practice direction provides otherwise.

## **Practice Direction 27A – Small Claims Track**

### **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 **theirhis** 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 or any other person authorised under the Legal Services Act 2007 to act as a litigator or advocate; and
- (2) a lay representative means any other person.

### **3.2**

- (1) A party may present **theirhis** own case at a hearing or a lawyer or lay representative may present it for **themhim**.
- (2) The Lay Representatives (Right of Audience) Order 1999 provides that a lay representative may not exercise any right of audience:–
  - (a) where **theirhis** 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** ~~OMITTED~~ *(Paragraph 4.1 has been previously omitted.)*

**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. [out of date paragraph 4.2 to be omitted]~~

**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~~~~themselves~~ before allowing any other person to do so,

(2) ask questions of all or any of the witnesses ~~himself~~~~themselves~~ 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 ~~their~~~~his~~ judgment as briefly and simply as the nature of the case allows.

(2) ~~They~~~~He~~ will normally do so orally at the hearing, but ~~they~~~~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 ~~their~~~~his~~ reasons and the court will send a copy to each party.

**5.4A** Where the judge decides the case without a hearing under rule 27.10, the judge will prepare a note of their reasons and the court will send a copy to each party. If a party has objected under rule 27.10(3) to the case being decided without a hearing, the judge's note must include their reasons for deciding that the claim is suitable to be dealt with on the papers.

**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 **theyhe** will not attend a final hearing and sets out the effect of **theirhis** 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(2)(e) (loss of earnings) and (f) (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 £95 per day for each person, and

(2) for experts' fees, a sum not exceeding £750 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 £10,000, reference should be made to paragraph 7.4 of Practice Direction 26 and to paragraph 7.1(3) of Practice Direction 46.)

## **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 **theirhis** absence because **theyhe** gave notice under rule 27.9 requesting the court to decide the claim in **theirhis** absence,

an application for permission to appeal must be made to the appeal court.

**8.2A** In considering an appeal under paragraph 8.2(1), the appeal court must take into account –

(b) any objections filed under rule 27.10(3);

(b) the note of reasons produced under paragraph 5.4A, including any reasons for deciding that the claim was suitable to be dealt with on the papers; and

(c) the summary nature of the note of reasons.

**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, AND LANDLORD AND CONTRACT-HOLDER CLAIMS UNDER THE RENTING HOMES (WALES) ACT 2016 (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 ~~they~~~~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 ~~their~~~~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 ~~they are~~~~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 ~~they do~~~~does~~ not [do so] [ ] ~~their~~~~his~~ [Claim][Defence] [and Counterclaim] will be struck out and (specify consequence).