

# An Overview of the Small Claims Court Procedure

Daniel Curtin and Emily Davison  
Greenhalgh Kerr Solicitors

Lancs & Cheshire IRRV Association



1. Preliminary considerations
2. Issuing and progressing the claim
3. Dealing with the hearing

# Picking the right case

- Is the debtor an individual or a company?
- How large is the debt?
  - Small claims = < £10,000
  - Larger the debt, higher the court fee
  - Value of recovery to the council? May not be worth issuing proceedings for a nominal debt.
- Is the debtor likely to defend? Have we had contact with the debtor previously/recently?
- **ASSETS – how likely are we to recover?**
  - Does the debtor have an asset?
  - If the debtor is a company, does their balance sheet show they assets? Are they solvent on paper? How long ago were the accounts last filed
  - Does the debtor have access to liquid funds, i.e. able to pay?
  - Is the asset encumbered by any charges, if so, do we know how much is owed to the creditors?
- Ultimately, all of the above points should be considered alongside recoverability, before the decision is made to issue.
- Court fees are due to be updated next month – keep an eye on the EX50 for the updated fees!
- The default position is that unless the claimant has a contractual or statutory right to costs, they are entitled to fixed costs only.

# What do we need / need to know now?

- How did the debt arise? Invoice, terminated contract / agreement etc.
- What evidence do we have to support the claim? Such may include:
  - Copy invoice
  - Any correspondence with the debtor where the debt (or payment) is discussed
  - Any admissions from the debtor
  - Any notices served
- What has been agreed / stated to the debtor previously
  - Have we agreed interest and are we seeking it?
  - Does the invoice allow for the recovery of interest
  - Were any costs included / is there a provision for the recovery of costs
- Address for service
  - Has the debtor been in constant contact
  - Is the debtor within the jurisdiction
  - Has the debtor provided a new address for service? Forms which may have been submitted with address
  - Is there anything to suggest that the debtor no longer lives at forwarding address? Trace necessary?
- Limitation – what is the date for limitation and how soon do we need to issue?

# Thinking from the end – Enforcement

- Enforcement options should be considered before deciding to issue proceedings.
- There several options for enforcing a CCJ once it is obtained – *we should not be issuing proceedings unless we have an idea of how we are going to enforce that Judgment (based on current knowledge).*
- The ultimate goal should be to obtain payment voluntarily, but if the debtor won't comply, there are some options available to enforce the Judgment depending on the current position:
  - Charging order
  - Order for sale
  - Third party debt order
  - High Court enforcement
  - Attachment of earnings
  - Order for questioning
- The costs of each action should be weighed against the prospects of recovery. This should be done before issuing proceedings, and when considering whether to enforce the Judgment.

# Enforcement – Charging Order (1)

- The court will generally only consider applications for debts of over £1,000.
- The process for obtaining a charging order is detailed within CPR 73 and the Charging Orders Act 1979.
- Gives the creditor a beneficial interest over property owned by debtor to the value of the Judgment debt, plus any interest and recoverable costs. Provides security but does not guarantee payment by itself.
- Much like a mortgage – settled upon sale of the property before the debtor receives any proceeds (regardless of whether by enforcement or voluntary sale).
- Before considering this option, the creditor should decide if they are content to rest on the security once the charging order is registered, or if they are prepared to enforce in absence of payment.
- Usual application would be in form N379 for a charging order on land. Creditor should have an idea of the available equity before making the application.
  - The application fee is currently £119.
  - Application should be sent to the CNBC (Civil National Business Centre) by email.
- Provided court is satisfied with application, interim charging order will be drawn and sent to the judgment creditor.
  - Creditor then has 21 days to serve on the ICO on interested parties.
  - And 28 days in which to file certificates of service and a witness statement confirming the debt, interest and costs due under the Judgment, to be included in the final charging order (CPR 73.7).
  - As a general rule, we are only able to obtain fixed costs of £110 (CPR 45.23) plus disbursements.

## Enforcement – Charging Order (2)

- Provided the rules have been adhered to and the debtor has not objected to the charging order, the final charging order will be drawn and sent to the judgment creditor.
- The charging order application will usually be considered on paper (without a hearing) unless the debtor or another interested party objects to the making of the charging order.
- Once the ICO is received, this can then be registered against the beneficial interest in the property.
- Should an interested party file an objection within 49 days from the date of the order, a hearing date may be set.
  - If at the hearing the interim order is set aside, the charge will need to be removed from the title / the application cancelled.
- If the creditor is successful at the charging order hearing, or if no objections are received / issues are raised within 49 days of the date of the ICO, the final charging order should be drawn and sent to the creditor.

# Enforcement – Order for sale (1)

- While the charging order secures the position (assuming there is sufficient equity in the property!), sometimes it is necessary to enforce the charging order by way of order for sale proceedings in order to obtain payment.
- Several things should be considered here before taking this option:
  - Is the debt still at least £1,000?
  - This is considered a draconian measure, as such, the court will need to see evidence of alternative prior enforcement (include within witness statement).
  - Are all proprietors also debtors? If a co-owner is not a debtor, this may make obtaining the order more difficult.
  - Does the debtor live at the property? Does anyone live at the property
  - Do any dependents live at the property?
  - Is the debtor in any way vulnerable?
  - Does the debtor own any other properties in which they can reside?
  - If this is the debtor's only property, do they have any other places where they can stay or are they able to downsize? Is the council able to easily re-home the debtor if not?
- If the decision is to enforce the charging order, Part 8 proceedings would be issued pursuant to CPR 73.10C.



## Enforcement – Order for sale (2)

- Claim form N208 should be used – include any joint proprietors in the claim
- All written evidence (witness statement) must be filed and served alongside the claim form – provides a background, details prior enforcement action, details of sums paid, interest claimed etc.
- The order is discretionary – the Judge on the day will decide whether or not the order should be made.
- Things to keep in mind and make sure are done before issuing:
  - Was the FCO served on all interested parties?
  - If the debtor does not occupy the charged property, was a letter sent to the occupier?
  - Has a 'drive by valuation' been obtained?
  - Have we written to all other creditors seeking redemption figures? Sufficient equity?
  - Sent at least 3 rounds of letters to debtor / interested parties?
- Once the pleadings have been filed (the court local to the land charged), the matter will proceed to a hearing.
- Court fee is £332.

# Enforcement – Third Party Debt Order

- Covered by CPR 72.
- Option becomes available if we have details of debtor's bank account, either from cheques paid or other means.
- Need to ensure debtor has sufficient funds in their bank account to settle the debt.
- Most commonly used against banks where the debtor holds an account that we are aware of but can be used against any party which owes money to debtor (except court).
- Third party does not need to be connected to the proceedings in any way but must be in the jurisdiction.
- Two-part process – application is made without notice in form N349 with the £119 court fee.
- Court will consider the application, draw up an interim order and list for a hearing (should be a quick process).
- Matter will be listed for a hearing within 28 days from the date of the interim order – order, application and any docs filed in support must be served on the third party no less than 21 days before the hearing.
- Papers must be served on debtor not less than 7 days after papers are served on third party and at least 7 days before the hearing.

# Enforcement – HCEO / County Court Bailiff

- County Court bailiff will enforce a judgment up to £5,000 by way of a warrant of control. Fee is £119.
- County Court Bailiff is an employee of the court; HCEO are private bailiffs.
- HCEO can seize and sell goods belonging to debt to settle judgment debt and fees.
- HCEO will transfer the judgment to the high court and obtain a writ of control for a fee of £71. The fee is recoverable and HCEO will take percentage of recovery from any realization.
- Removal of goods and vehicles is seen as a last resort should the debtor fail to comply with the enforcement agent.
- Stage one (Compliance) – if debtor fails to comply with agent's efforts, they will attend the debtor's property to take control of goods owned by debtor.
- Stage two (Sale/Disposal) – comes into play when goods need to be removed, however some goods are exempt (tools, books, vehicles etc. necessary for debtor for employment/business and items to satisfy basic domestic needs such as clothes and furniture).

# Enforcement – Attachment of Earnings

- Process is covered by CPR 89 and Attachment of Earnings Act 1971.
- Application is made in form N337 (per debtor) and incurs a court fee of £119.
- Provides for deductions to be made from debtor's earnings by the employer on a regular basis until judgment is settled.
- Order will specify the amount owed by the debtor, the rate at which deductions should be made and the amount below which the court considers the debtor's earnings should not be reduced (the protected earnings rate).
- The employer must send the money to CAPS (centralised attachment of earnings payments system) and then distribute to the creditor/s.
- Debtor must be employed (not self-employed) – often a good bargaining tool as debtor may not want employer knowing about judgment debt.
- Court will send N55 notice of application for AOE order to creditor and debtor. If notice is returned undeliverable, a notice of non-service (form N216) will be sent to creditor to attempt service personally.
- Employer is legally required to make payment of the ordered deductions to CAPS. Should check with CAPS first if payments not received. If employer ceases paying, they may be required to attend court to explain their failure to comply with the order.

# Enforcement – Order to attend Court for Questioning

- Process for the application is covered by CPR 71.
- Application is made in form EX140 for individual debtors and EX141 for officers of a debtor company – court fee is £59.
- Allows for an order to be made for the debtor to attend court to provide information on their current financial position.
- The court will require that the debtor complete a standard questionnaire which will be comprehensive and includes details of all aspects of the debtor's finances including employment, property ownership, income and expenditure etc.
- Not a direct form of enforcement as does not require that the debtor made payment, nor does it result in an order for payment.
- Used more as a form of indirect, preliminary 'enforcement' in order to obtain further information which may make another direct enforcement method a viable option.
- Upon receipt of the application, the court will draw up the order and list it for a 'hearing' albeit it is not a hearing as is usually known – also known as an 'appointment'.
- Should the debtor fail to attend court on multiple occasions, a high court or circuit judge may in their discretion issue a suspended committal order which must be personally served. Failure to attend a further hearing would result in a warrant being issued for the debtor's arrest.

# First steps - sending a letter

- The form which the letter of claim takes would depend on whether the debtor is an individual or a company.
- Where the debtor is an individual, we must be very careful to adhere to the Pre-Action Protocol (PAP) for Debt Claims.
  - Creditors should expect costs consequences if the PAP has not been adhered to on the way to issuing proceedings.
- A letter of claim sent to an individual should fully particularise the debt, provide 30 days for the debtor to make payment and include all information provided by para 3.1 of the PAP for debt claims. This will include enclosing an information sheet, reply form and financial statement (income and expenditure) form.
  - If the debtor replies with 30 days, it is for the creditor to consider whether they can enter into negotiations, albeit a final response should be sent before deciding to issue.
- Where the debtor is a company, the court will expect that the Practice Direction (PD) on Pre-Action Conduct has been adhered to.
  - This is less onerous and para 3 of the PD confirms that the parties should have exchanged sufficient information to understand both parties' positions, decide how to proceed, attempt to settle without proceedings etc.
  - A letter to the Company particularising the debt, providing 7-14 days to make payment and confirming possible consequences should the debt not be paid, should be sufficient.

# Issuing The Claim

1. What is the Small Claims Track?
2. Timeline to get judgment.
3. Starting the Claim.
4. Defence Received.
5. Directions.
6. The Hearing.
7. Requests for Judgment.
8. Additional considerations.

# What is the Small Claims Track?

1 of 4 tracks.

Value of the Claim between £0.00 and £10k.

Less formal.

More accessible to litigants in person.



## Small Claims Track Timeline.

Send Claim to Court to issue.

Notice of Issue (14 days for Defence / Acknowledgment of Service). (RFJ? Form N225)

Notice of Proposed Allocation to Small Claims Track.

Directions Questionnaire. (RFJ? Form PF84A)

Allocation to Small Claims Track.

Small Claims Mediation.

Settle – Concludes matter / Doesn't settle – Transfer to local Court.

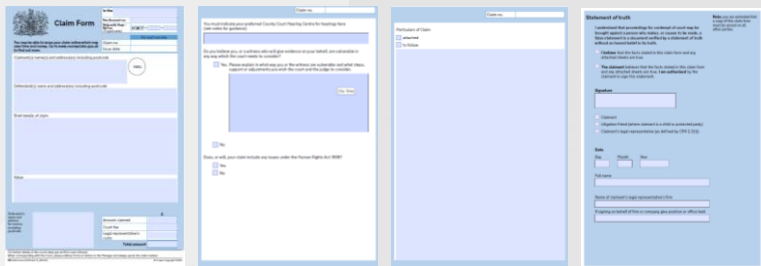
Small Claims Directions.

Small Claims Hearings.

# Send the Claim to Court for Issue.

## Claim Form N1 – Part 7 CPR (3 x copies to Court).

- [www.gov.uk/government/collections/county-court-forms](http://www.gov.uk/government/collections/county-court-forms)
- All claims issued in the Civil National Business Centre



## Particulars of claim (1 x copy to Court).

- On claim form or in a separate document.
- Succinct summary of who each party is, the legal basis of the claim, relevant dates, reference to any relevant documents.
- Interest – contractual or S.69 County Courts Act 1984 8%pa

## Court fee

- Form EX50
- Paid by cheque or PBA Account.

**Civil court fees**  
Issuing claims

Money claims – Civil Fees Order 13-12

To issue a claim for money, the fees are based on the amount claimed, including interest. For Court Issued Claims, please round fractions of pence down to the nearest penny. Example: A Fee calculated as being £1050.5096 rounds down to a payable fee of £1050.50.

Value of your claim		Fee payable	
Up to	£300		£35
Greater than	£300 but no more than	£500	£50
Greater than	£500 but no more than	£1,000	£70
Greater than	£1,000 but no more than	£1,500	£80
Greater than	£1,500 but no more than	£3,000	£115
Greater than	£3,000 but no more than	£5,000	£205
Greater than	£5,000 but no more than	£10,000	£455
Greater than	£10,000 but no more than	£200,000	5% of the value of the claim
Greater than	£200,000		£10,000

Maximum amount for Secure Data Transfer (SDT) or Money Claim OnLine (MCOl) £99,999.99

Secure Data Transfer is a secure system to enable customers issuing in bulk to upload and transfer data files directly from their systems to HM Courts & Tribunals Service systems.

Please note: The fees on Form EX50 are due to change soon (date unknown), keep an eye on any changes - <https://www.gov.uk/government/consultations/implementing-increases-to-selected-court-and-tribunal-fees/outcome/consultation-response-implementing-increases-to-selected-court-and-tribunal-fees#annex-b--final-list-of-fee-changes>



# Notice of Issue

- Date of issue.
- Court will serve on the Defendant.
- Defendant will have 14 days to file/serve a defence (or 28 if the Defendant files/serves an Acknowledgment of Service) or an admission (full/part).

Request for Judgment (Form N225) if the Defendant fails to file/serve a Defence in 14 days.

Request for judgment and reply to admission (specified amount)

Complete section A or B. If you complete section A you must also confirm, where applicable, that particulars of claim have been served in accordance with the rules.

In all cases you must complete sections C and D. If the defendant has given an address on the form of admission to which correspondence should be sent, which is different from the address shown on the claim form, you must tell the court. Remember to sign and date the form. Your signature certifies that the information you have given is correct.

**A**  The defendant has not filed an admission or defence to my claim  
 I confirm that particulars of claim have been served on the defendant in accordance with the rules. Now complete section C and all the judgment details at section D. Decide how and when you want the defendant to pay. You can ask for the judgment to be paid by instalments or in one payment.

**B**  The defendant admits that all the money is owed. Tick only **one** box below and complete section C and all the judgment details at section D.  
 I accept the defendant's proposal for payment. Say how the defendant intends to pay. The court will send the defendant an order to pay. You will also be sent a copy.  
 The defendant has not made any proposal for payment. Say how you want the defendant to pay. You can ask for the judgment to be paid by instalments or in one payment. The court will send the defendant an order to pay. You will also be sent a copy.  
 I do NOT accept the defendant's proposal for payment. Say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment on the back of this form. Send this form to the court with **defendant's admission N2A**. The court will fix a rate of payment and send the defendant an order to pay. You will also be sent a copy.

**C** Defendant's date of birth  
 Defendant's date of birth is not stated in the form of reply but is known to the claimant as: [ ][ ][ ] / [ ][ ][ ] / [ ][ ][ ]  
 Defendant's date of birth is not stated in the form of reply and is not known to the claimant.

**D** Judgment details  
I would like the defendant to be ordered to pay:  
 immediately  
 by instalments of £ [ ] per month  
 in full by [ ][ ][ ] / [ ][ ][ ] / [ ][ ][ ]

Amount of claim as admitted	
(including interest at date of issue)	
Interest since date of claim (if any)	
Period from [ ][ ][ ] to [ ][ ][ ]	
Rate %	
Court fees shown on claim	
Legal Representative's costs (if any) on admission claim	
Sub Total	
Legal Representative's costs (if any) on ordering judgment	
Sub Total	
Deduct amount (if any) paid since issue	
Amount payable by defendant	

I certify that the information given is correct.

Signed [ ] Position or office held [ ]  
(claimant/claimant's solicitor/ litigation friend) (if signing on behalf of firm or company)

Date [ ][ ][ ] / [ ][ ][ ] / [ ][ ][ ] Please return the completed form to the court.

These address forms go to the Operational Delivery Manager and quote the claim number  
N225 Request for judgment and reply to admission (specified amount), (PR 17)

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# Defence Received.

## - Is Summary Judgment suitable?

Test (CPR 24.3):

*The court **may** give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—*

- a) *it considers that the party **has no real prospect** of succeeding on the claim, defence or issue; and*
- b) *there is **no other compelling reason why** the case or issue should be disposed of at a trial.*

- Form N244, supporting witness statement.
- Court Fee £275.00.

**Directions questionnaire (Small Claims Track)**

To be completed by or on behalf of: [ ]

You should enter the date by which this questionnaire must be returned and the name of the court it should be returned to since this may be different from the court where the proceedings were issued.

If you have settled this claim (or if you settle it on a future date) and do not need to have it heard or tried, you must let the court know immediately.

**A Settlement/Mediation**

Under the Civil Procedure Rules parties should make every effort to settle their case. At this stage you should still think about whether you and the other party(ies) can settle your dispute without going to a hearing.

You may seek to settle the claim either by direct discussion or negotiation with the other party or by mediation. If settlement is reached parties may enter into a binding agreement which can be enforced if the terms of the agreement were to be breached.

Mediation is a way of resolving disputes without a court hearing, where the parties are assisted in resolving their dispute with the help of an impartial mediator. If the claim is settled at this stage the parties can avoid further court fees, costs and time involved in preparing and attending a hearing.

You may use any mediation provider. However, HMCTS provides a **free confidential** Small Claims Mediation Service which is available to parties in most small claims cases which are for less than £10,000.

Mediation is usually carried out by telephone in one hour time limited appointments convenient to the parties and is quicker than waiting for a court hearing before a judge. There is no obligation to use the Small Claims Mediation Service nor are you required to settle if you do. If you are unable to reach agreement with the other party or mediator, the claim will proceed to a small claims hearing.

You can get more information about mediation from [www.gov.uk](http://www.gov.uk)

If all parties agree, this case will be referred to the Small Claims Mediation Service. In any event the court may order the service to contact you to explore mediation.

A1 Do you agree to this case being referred to the Small Claims Mediation Service?  Yes  No

Please give your contact details below – If all parties agree to mediation your details will be passed to the small claims mediation team who will contact you to arrange an appointment.

**You must complete the remainder of the form regardless of your answer to A1**

**B Your contact details**

Your full name: [ ]

Address for service: [ ]

Telephone number: [ ] Mobile: [ ]

Email: [ ]

Notes: It is essential that you provide this information, particularly if you have requested mediation. Staff will contact you within office hours (9am - 5pm).

N180 Directions questionnaire (small claims track) (1/22) © Crown copyright 2023



# Defence received.

## - Directions Questionnaire deadline.

- Notice of Proposed Allocation to Small Claims Track and deadline to file/serve Directions Questionnaire.

We must file/serve the Directions Questionnaire by the date specified otherwise the Claim could be struck out.

Request for Judgment (Form PF84A) if the Defendant fails to file/serve a Directions Questionnaire by the deadline.

**Directions questionnaire (Small Claims Track)**

To be completed by, or on behalf of, [Name] [Address] [Postcode]

**4 Settlement/Mediation**

**4.1 Your contact details**

Your full name: [Name]  
 Address for Service: [Address]  
 Telephone number: [Number] Mobile: [Number]  
 Email: [Email]

**Request for Judgment on failure to comply with an order made under rule 3.5(1) (rule 3.5(2))**

PF 84A

IN THE HIGH COURT OF JUSTICE  
 DIVISION  
 District Registry  
 in the County Court sitting at . . . . .

Claim No. [Number]

**Claimant**

**Defendant**

**To the Court**

An order was made on (date) that unless (party) (set out the order to be complied with) his statement of case would be struck out.

The (party) has not complied with that order (within the specified time).

I request that judgment be entered against (party) for:

- (1) the sum of £ . . . . . and costs, or
- (2) an amount of money to be decided by the court, and costs, or
- (3) delivery of (describe the goods) or payment of their value to be decided by the court, and costs, or
- (4) any combination of the above remedies.

The right to enter judgment as above has arisen under rule 3.5(2) because the (party) has not complied with the said order.

I certify that the information given above is correct

Signed: [Signature]  
 \*Claimant/Defendant/Litigation friend(s)/solicitor  
 \* details as appropriate

Position or office held if signing on behalf of firm or company: \_\_\_\_\_

Dated \_\_\_\_\_

## Small Claims Mediation.

- Appointment listed.
- Appointment takes place.
- Settles – concludes matter.
- Doesn't settle – transferred back to Court for transfer to local Court.

# Transfer to local Court and Small Claims Directions.

- Witness evidence to be filed/served 14 days before the hearing.
- Payment of the Hearing Fee by specific date. Form EX50.

**Must pay the hearing fee by the specified date otherwise the Claim may be struck out.**

## Hearing fees – fees order 2.1

Small Claim Track where the amount claimed is:

up to £300	£27
between £300.01 and £500	£59
between £500.01 and £1,000	£85
between £1,000.01 and £1,500	£123
between £1,500.01 and £3,000	£181
more than £3,000	£346

Please refer to the court leaflet EX306 – The Small claims track in the civil courts for further information.

# Witness Evidence

- Set out the facts – chronological order.
- May include any legal points to be raised.
- Include key documents e.g. lease agreement, statement of account, relevant correspondence.
- Strict rules re. evidence (CPR 32) do not apply save for CPR 32.1 which states that the Court has the power to control evidence.



# The Hearing

## Preliminary Points:

- Who is in attendance?
- Does the Judge have all of the documents? Bundle etc.

## Structure:

- Matter introduced (usually by the Judge).
- Claimant then Defendant will put forward position.
- Cross examination of witnesses - the Judge may accept witness statement as evidence, or may ask the questions himself BUT prepare questions for cross examination in case!
- Judgment.
- Quantum.
- Costs.

## Additional Points:

- Informal.
- Stick to relevant issues from the evidence.
- Prepare a calculation in full for judgment if required.
  - Debt amount / up to date interest
  - Bring a calculator

# Costs

- Generally fixed costs (CPR 45) unless there is a contractual right to costs / statutory right to costs (*Chaplain Limited v Kumari [2015] EWCA Civ 798*).

- Fixed Costs:

Court Fee  
 Commencement Costs (PD 45 Table 2).  
 Entry of Judgment Costs (PD 45, Table 3).

Advocate attendance costs – seek to recover those too?

- Summary assessment of costs where contractual right to costs / statutory right to costs. Must file an N260 Statement of Costs no later than 24 hours before the hearing.

TABLE 2: rule 45.17 – amount of fixed commencement costs in a claim for the recovery of money or goods

Relevant band	Where the claim form is served by the court or by any method other than personal service by the claimant	Where— • the claim form is served personally by the claimant, and • there is only one defendant	Where there is more than one defendant, for each additional defendant personally served at separate addresses by the claimant
Where—  • the value of the claim exceeds £25 but does not exceed £500	£50	£60	£15
Where—  • the value of the claim exceeds £500 but does not exceed £1,000	£70	£80	£15
Where—  • the value of the claim exceeds £1,000 but does not exceed £5,000; or • the only claim is for delivery of goods and no value is specified or stated on the claim form	£80	£90	£15
Where—  • the value of the claim exceeds £5,000	£100	£110	£15

TABLE 3: rule 45.19 – fixed costs on entry of judgment in a claim for the recovery of money or goods

	Where the amount of the judgment exceeds £25 but does not exceed £5,000	Where the amount of the judgment exceeds £5,000
Where judgment in default of an acknowledgment of service is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£22.00	£30.00
Where judgment in default of a defence is entered under rule 12.4(1) (entry of judgment by request on claim for money only)	£25.00	£35.00
Where judgment is entered under rule 14.2(5) (judgment on admission of whole or part of a claim for a specified sum) and claimant accepts the defendant's proposal as to the manner of payment	£40.00	£55.00
Where judgment is entered under rule 14.2(5) (judgment on admission of whole or part of a claim for a specified sum and court decides the date or time of payment)	£55.00	£70.00
Where summary judgment is given under Part 24 or the court strikes out a defence under rule 3.4(2)(a), in either case, on application by a party	£175.00	£210.00
Where judgment is given on a claim for delivery of goods under a regulated agreement within the meaning of the Consumer Credit Act 1974 <sup>1</sup> and no other entry in this table applies	£60.00	£85.00



**Judgment obtained – proceed with enforcement.**



# Additional points - Non-attendance by a Party at the hearing.

If a Party does not intend to attend the hearing, that Party must:

- 1) Give **written notice to the court** and the other party at least 7 days before the hearing date that he will not attend and request that the Court decide the claim in its absence.
- 2) **Serve on the other party at least 7 days** before the hearing date any other documents which he has filed with the court; and

Failure to do so:

By Claimant – the Claim may be struck out.

By Defendant – the Court may decide the matter on the Claimant’s evidence alone where the Claimant does attend the hearing or doesn’t attend but given notice as above.

CPR 27.9.

*Owen v Black Horse Ltd [2023] EWCA Civ 325* – a Party is considered to have “attended the hearing” if not personally in attendance but representative (i.e., a solicitor) is in attendance on that Party’s behalf.

# Additional points - Non-attendance by a Witness at the hearing.

CPR 27.8(3) The strict rules of evidence do not apply.

CPR 27.2 The following Parts of these Rules do not apply to small claims (c) Part 32 (evidence) except Rule 32.1 (power of Court to control evidence).

CPR 32.2

- 1) The general rule is that any fact which needs to be proved by the evidence of witnesses is to be proved –
  - a) at trial, by their oral evidence given in public; and
  - b) at any other hearing, by their evidence in writing.

Strict rules of evidence don't apply so we don't need to send a witness to the hearing to give oral evidence.

CPR 32.1: Court to control evidence. Therefore, it is for the Court to decide what weight to attach to any witness evidence in circumstances where that witness does not attend. Failure for a witness to attend does not automatically get rid of the evidence but does pose a risk as to how much weight that evidence will have.

i.e., evidence is documentary (i.e., tenancy agreement / hire agreement etc.) risk is lower.

# Additional points – Council Officers, Rights of Audience.

- Housing / rent cases only - s.60 County Court Act 1984.

A person may carry out a "reserved legal activity" (which includes the exercise of a right of audience (section 12(1), LSA 2007)) provided they are either:

- a. An "authorised person" within the meaning of the LSA 2007 (see Authorised person) (i.e., Solicitor/Barrister).
- a. An "exempt person" in relation to that activity (see Exempt person).

(Section 13(2), LSA 2007.)

Council officers are "exempt" (s.60 County Court Act 1984).

- Paragraph 1(7), Schedule 3 to the Legal Services Act 2007.

The general rule: Where a Council Officer is not a solicitor or barrister but is supervised by a city solicitor, they will be "authorised" pursuant to this paragraph of the schedule.

However, every Council Officer needs to satisfy themselves that they have a right of audience before attending any hearing on behalf of the Council.

*Note: A lay representative may be prevented from attending a hearing in circumstances where their client is not in attendance (Section 3 of the The Lay Representatives (Rights of Audience) Order 1999).*



**Thank you.**

**Any questions?**

