



# **TAKING A SMALL CLAIMS ACTION IN THE COUNTY COURT**

## **THE HEARING**



# Welcome to this guide

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## Preparing for the hearing

- Do everything you are told to do in the Notice of Allocation
- You will have already provided copies of your documents to the court and the other party. Take the **originals** with you to the hearing and have copies that you can give to the Judge.
- Make sure that any documents you want to make reference to are in the right order. It is also a good idea to write down the things you want to say.
- If a witness or an expert is giving evidence for you at the hearing, make sure they know where the court is and when the hearing will start. Arrange to meet them at the court some time before the hearing is due to start.



## Witness statements

You should only provide a witness statement if the Court specifically asks for one in the Court Directions. A copy of the statement should be included in the paperwork that you provide to the court and the Defendant in response to the Court Directions.

If you are asked to provide a witness statement

If you have a witness and they don't want to attend



## Witness statements

If you are asked to provide a statement, do the following:

- Write the name and claim number of the case at the top of every page.
- Write in bold at the top the name of the person whose statement it is.
- Number the pages and fasten them together.
- In the first paragraph give the name, address and occupation of the person giving the statement and explain their involvement with the case e.g. 'My name is Joe Bloggs and I live at 24 Any Road, Any Town, Any County, WA2 4JP. I am the Claimant in this case.'
- Number the paragraphs.
- Consider breaking it down into sections if it is more than a couple of pages long e.g. The Agreement; The Works; The Damage; The Repairs etc.
- Dated and sign it or get the person making it to date and sign it if it is not your statement.
- Set out the facts in the order in which they happened. Only state what you know to be true – if you're not absolutely sure but you suspect something is true, you need to say that you 'believe x or y'. Witness statements should include all relevant facts about your case but should not generally state opinion.
- Refer to documents that support what you are saying e.g. contracts, invoices, letters etc. Copies of all of these documents should be attached at the end of the witness statement, in the same order as they are mentioned in the statement. When a document is referred to in the witness statement (for the first time), the statement should say that a copy of it is attached. Each exhibit should be labelled with a separate letter or number, which will be referred to in the witness statement. For example: 'I attach at Exhibit A, a copy of the receipt that the Defendant gave me'.
- Include the following words at the end of the statement (this is called the Statement of Truth): 'I believe that the facts stated in this witness statement are true.' Sign, print and date the statement.

**If you knowingly give false information in your statement and you have verified it with a Statement of Truth you may be liable to a fine or imprisonment.**



## If your witness doesn't want to attend

You can issue a witness summons by completing Form N20 which is available free from any court office. You must issue a witness summons at least **7 days** before the date of the hearing. It must reach the witness (be 'served') at least **4 days** before the hearing. A fee is payable. Court staff will be able to tell you how much this is.

When you issue a witness summons you will have to pay the witness's expenses in travelling **to** and **from** the court and compensation for loss of time in attending court.



## The Hearing

- When you arrive at court, report to the receptionist or the court usher who will tell you where to wait. Wait for your name to be called. If you need to leave the waiting area tell the usher or another person involved in your case.
- Close to the waiting area you will find a list of cases to be heard that day. Look to see if your case will be heard by a Circuit or District Judge.  
A Circuit Judge is called 'Your Honour'  
A District Judge is called 'Sir' or 'Madam'
- The judge will speak first, to check who you are and whether you are the Claimant or the Defendant.
- The judge will then invite the claimant and the defendant to be seated. The judge may then explain how the hearing will be conducted. This may vary from case to case. The judge may ask the claimant to speak first to set out any reason or evidence to support their claim. Then the defendant will be given an opportunity to ask the claimant about the statement and the evidence. Each party will then be given an opportunity to ask other questions.
- It would be useful to make a note of what the other person, and their witnesses say and of the judge's decision and the reason for it.
- If you do ask questions, remember to ask only one question at a time. Never interrupt the judge or a witness.
- The Judge is likely to make notes throughout the proceedings and you should try and remember to give him time to record what you have said.





## Representation at the Hearing

You can take someone with you to speak for you. If you do not wish to represent yourself you can be represented by a lay representative or a solicitor. Please note that if you use a solicitor you will not be able to claim his costs back. A lay representative is anybody other than a solicitor and can be anyone you choose, such as a husband or wife, a relative, a friend or an adviser. Your lay representative cannot go to the hearing without you, unless you have permission from the court.

Advice agencies cannot generally provide a lay representative to help you at hearings. If you are thinking of asking an agency, contact them as soon as you know your hearing date. They will tell you whether or not they can help. Some lay representatives may want to be paid for helping you at the hearing and you must make sure you know exactly how much this will be. You will have to pay for a lay representative yourself, even if you win the case.

If you just want to bring a friend or relative into court to consult with, but not to speak on your behalf, they are known as your "McKenzie Friend".



# Judgment

At the end of the hearing the judge will tell you the decision the court has reached (the judgment) and give brief reasons for it.

A written copy of the decision (an 'order') will be sent to you after the hearing. The order will not set out the reasons for the decision. If the claim was for an amount of money, the order will include the arrangement for payment. You should carry out the instructions when you are told to do so and not wait until the written order arrives.

If you told the court that you would not be attending the hearing, you will also get brief reasons for the decision.

If the Judge needs more time to reach a decision you will be sent a notice telling you the time, date and place when the decision will be given. This is called 'reserving the judgment'.



## Appealing the decision

If you lose your case and you want to appeal against the judge's decision, you will need to get permission to do so. You must have proper grounds and cannot appeal because you think the judge's decision is wrong.

The appeal court will allow an appeal where the decision of the lower court was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

Appealing a  
decision made  
without a hearing

Appealing a  
decision dealt with  
in your absence at  
your request

Appealing the  
decision made  
at a hearing – I  
was present

Appealing the  
decision made at  
a hearing – I  
wasn't present



## **Appealing a decision made without a hearing**

Application for permission to appeal can be made in your appeal notice.



## **Appealing a decision dealt with in your absence at your request**

Application for permission to appeal can be made in your appeal notice.



## **Appealing the decision made at a hearing – I was present**

If you attended the hearing at which the decision was made, you can ask the judge for permission at the end of the hearing.

You must have proper grounds and cannot appeal because you think the judge's decision is wrong.



## Appealing the decision made at a hearing – I wasn't present

If you were neither present nor represented at the hearing, and did not request the court to deal with the matter in your absence, you may apply for judgment made at that hearing to be set aside and the case re-heard. You must make the application **within 14 days** of receiving the judgment. If you want to make an application for the judgment to be set aside, you should ask the court for an **Application Notice**. You may have to pay a fee.

After you have submitted an Application Notice, the court will tell you when you must come to court for the hearing of the application before a judge.

The judge will only re-hear a case if:

- you have a good reason for not attending the hearing, or
- you have a reasonable prospect of being successful at a re-hearing.

If the judge agrees to re-hear the case, the court will fix a new hearing date for the case. If the claim is straightforward, the judge may decide to deal with the case immediately after the hearing of the application.

