

## **CONSUMER/CONTRACT DISPUTES - LEGAL EXPENSE INSURANCE SMALL CLAIMS TRACK / COSTS/BENEFIT ANALYSIS -**

This sheet summarises advice that we often have to give to clients about civil, consumer or similar disputes where the amount in dispute is likely to be under £5,000.00. The same rules apply in personal injury cases where there are minor injuries which would attract compensation of less than £1,000.00. The purpose of this sheet is to alert you that instructing us to act might not be economically worthwhile. Keen as we are to accept your instructions, we are under a duty to you to make you consider whether the benefit of involving us justifies the cost of doing so.

The normal rule in Court cases is that the loser is ordered to pay the legal costs of the winner. This does not mean to say that the loser has to pay the winner's legal bill - the winner will still have a bill from his Solicitor but will be entitled to have the bulk of it reimbursed by the loser.

The significance of the Small Claims Track is that this rule does not apply.

When you issue Court proceedings, the Defendant can respond to the Claim in a variety of ways.

There is no problem if the Defendant either does not respond or if he admits the claim. Court Rules in these situations provide for certain limited costs to be awarded. These are called Fixed Costs. This amount is fixed irrespective of how much work has to be done by your Solicitor to actually issue the proceedings - as a rule of thumb, Fixed Costs are usually about half what it actually costs to have a Solicitor issue the Claim for you.

The problem comes if the Defendant disputes a claim where the amount at stake is less than £5,000.00 (£1,000.00 in personal injury cases).

The first thing that happens is that the case will be transferred to the Defendant's home Court. This may be exceedingly inconvenient for you if you are dealing with someone out of the area. Whilst you can deal with the Court by post, you will have to attend any hearing in your opponent's home Court and this will obviously involve time and expense if it is not a local Court.

The second thing that happens is that the case will be referred to the "Small Claims Track". This is still part of the County Court and is still dealt with by the same staff and in the same buildings but the procedure is totally different. It is informal. The rules of evidence do not apply in the same way and most importantly, as stated above the costs rules do not apply.

If you pursue a defended case through the "Small Claims Track" and win, the only costs that your unsuccessful opponent will have to pay are the Fixed Costs on the Claim form, the Court fee that you have paid and amounts for expenses of witnesses and the like. Only in the rarest circumstances are Solicitors costs awarded.

**The purpose of this rule is to encourage people to deal with small claims without lawyers - to keep Solicitors out of small claims!**

To put this in context, we set out below how we charge for our services for this kind of work. Our work includes meetings with you and other parties, considering and drafting documents, travel, telephone calls, emails and letters. We record our time as minimum units of **6 minutes** (1 unit is 6 minutes, 2 units 12 minutes etc). All short or routine letters and calls made and received (including with you) are charged as one unit of 6

minutes. Long letters and calls are charged in the appropriate number of units. **VAT** is charged on our costs and some disbursements at the current applicable rate. Our current hourly rates are set out below:

Partners, and Solicitors of 8 years or more post qualification experience	£180.00 per hour plus VAT
Solicitors and Legal Executives of between 4 and 8 years post qualification experience and other Fee earners of equivalent Experience	£160.00 per hour plus VAT
Solicitors and Legal Executives of up to 4 years post qualification experience Fee earners of equivalent Experience	£150.00 per hour plus VAT
Trainee Solicitors and other fee earners	£90.00 per hour plus VAT

You can quickly see that to involve a Solicitor is quite expensive. Giving initial advice will often involve up to 2 hours work. A contested case where a Solicitor is involved right up to the "Small Claims Track" hearing will run up a bill of £3,000.00 quite easily. If you only recover a fraction of this from your opponent, the exercise will be uneconomic because most of the award that is made to you will be taken up in costs. The same advice applies if you are defending a small claim - the costs rules make it uneconomic to have a Solicitor act for you.

In personal injury cases many Insurers take advantage of these costs rules to discourage small claims, pointing out that if they settle the claim, no Solicitors costs are payable.

It follows that we therefore usually advise clients in this situation to issue or defend the proceedings as Litigants in Person (i.e. without a Solicitor), perhaps with some guidance from us. There are plenty of leaflets and guides available at the County Court Office explaining the steps and the Court staff are there to assist you with the paperwork. Alternatively, you can issue your claim via the Internet using Money Claim Online – see <https://www.moneyclaim.gov.uk/csmco2/index.jsp>

### Enforcement

We also have to stress the point that getting an award is only the first stage. If the Defendant does not pay then you have to move on to a second stage called enforcement. This is like a second set of litigation. We always remind our clients chasing compensation claims or debts that the claim is only worth pursuing if you are sure that you can trace your opponent and that he or she or the Company concerned has the means to pay.

### Legal Expense Insurance

You may already have the means to fund obtaining advice or representation via a Legal Expense Insurance Policy. Many people have this but do not realise it! The cover is often sold with other insurance (for example, car insurance to cover motoring disputes, or house insurance). It is very important for you to find out whether you have such a Policy already and to consider whether it is appropriate to use it. If you have such a policy, you should consult with the Insurer before you instruct us, otherwise you may invalidate your Policy. Note also that your insurer may wish you to instruct its preferred lawyers.