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ISSUING SMALL CLAIMS **The Court Process**

If you present a claim to your opponent and your opponent either fails to respond or denies your claim and therefore are not willing to make payment to you this does not mean that your claim has to come to an end. You may wish to consider issuing Court Proceedings.

By issuing Court proceedings in respect of your claim, your claim will be registered with the County Court and will thereafter follow a timetable in order for your case to be ultimately heard at a Final Hearing or Trial and therefore decided by a Judge.

In all circumstances, issuing Court proceedings should be the last resort and efforts should be made to settle your claim before deciding to take legal action. Those efforts to settle should continue even after you issue proceedings as a failure to make efforts to settle can result in adverse consequences against you.

1. Benefits & Drawbacks

One of the benefits of issuing Court proceedings is that it may put your opponent under pressure to make attempts to settle your claim to avoid having to incur additional legal costs. This however will depend on the stance of your opponent and will not always be the case.

Issuing Court proceedings however does of course have some drawbacks:

(1) Unless you are exempt from paying Court Fees then the Court will require payment of certain fees at certain stages in order for your claim to be issued and progressed through the Court timetable. Such fees have to be paid by you initially and cannot be avoided. However, if you win your claim, you may claim these fees back from your opponent.

(2) The length of the timetable from date of issue to a Final Hearing can be anywhere (in normal circumstances) between 6 months and 12 months. Therefore, if your opponent wishes to fully defend the claim, then your claim may not reach settlement until the end of this timetable. Your claim can of course settle at any stage from the date of issue to the Final Hearing if you and your opponent reach an amicable settlement.

2. Court Fees

As previously mentioned, you are liable to pay the Court fees involved in issuing and progressing your claim through the Court process and timetable. Unless you are exempt, these

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fees cannot be avoided and must be paid otherwise, the Court will not deal with your claim nor progress it.

You can find out if you are exempt from paying Court fees by obtaining Leaflet EX160A from the Courts' website or visiting your local County Court.

The fees that are payable to the Court will be payable at certain stages of your claim. Fees are payable at the point of issue and prior to a Trial or Final Hearing. There may be other occasions where fees have to be paid i.e. if you make applications during the course of proceedings then application fees will become payable.

Next we shall explain each stage of the claim process and the fee involved.

3. Issuing of your Claim

This is the first stage of your claim.

There are 2 methods of issuing your claim. You can either issue your claim using the paper format of the Court forms or using the Money Claim Online Service (MCOL) which is an electronic method of issuing your claim. Both methods are similar in terms of procedure and timings.

The MCOL method can only take limited amounts of information and detail therefore if you have lengthy documents or detail that you need to include, you can use the MCOL method however, you will have to take additional steps to issue your claim including serving separately a Particulars of Claim and filing a Certificate of Service. Therefore the paper method may be the best method for you.

The main difference between the 2 methods is the Court fee involved. Using MCOL to issue your claim can be up to 30% cheaper than using the paper method.

The amount of the fee will depend on the value of your claim and the exact fees payable can be found in leaflet EX50.

When you wish to issue your claim in the County Court, you will have to complete a Form N1 (Claim Form). The Claim Form when completed should include:

1. Your name and address
2. The name and address of your opponent(s)
3. A brief detail of what your claim is about
4. The value of your claim

In addition to the Claim Form you should also including a Particulars of Claim. Your Particulars can form part of the Claim Form or be a separate document. The Particulars of Claim will form the basis of your claim and will expand on the brief detail you have given in your claim. The Particulars of Claim should include:

1. Full circumstances surrounding your claim
2. Your allegations against your opponent

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3. The remedy that you seek.

Your Particulars of Claim will also include a Statement of Truth which will be signed by you to confirm that the facts stated in the Particulars of Claim are true. Please note that if you sign a Statement of Truth knowing it to be false then you could be found guilty of Contempt of Court which can bring a prison sentence of up to 2 years, upon summary conviction.

Once you have sent your Claim Form, Particulars of Claim and Court fee to the Court, the Court will issue your claim and provide you with a copy of the Notice of Issue. The Notice of Issue will include the date that the Court received your claim, the date your claim was issued, and most importantly, the date that your opponent has to respond by.

4. Acknowledgement of Service

The Court will serve a copy of your Claim upon your opponent and they then have 14 days from the date of service to confirm that they have received your claim and to also give an indication as to whether or not they wish to:

1. Admit your claim in full
2. Admit only part of your claim
3. Defend your claim in full.

This time limit is varied slightly if you use the MCOL method and later serve a Particulars of Claim yourself.

If your opponent complies with the 14-day deadline and acknowledges your claim then depending on their indication as to how they wish to deal with your claim will depend on the next course of action taken by the Court.

If your opponent does not acknowledge your Claim or acknowledges your claim outside of the 14-day period, you may make a request for Default Judgment. If Judgment is granted in your favour, this will mean that you do not have to go through the process of proving your claim and therefore, the Court will order your opponent to pay you the amount of money that you have claimed as well as any interest and costs.

No fees are payable at this stage.

5. Defence

If your opponent has opted to defend or only admit part of your claim then, they will have 28 days from the date of service of the Claim to file a Defence.

Their Defence should include details of what particular allegations they admit, deny or cannot admit nor deny due to not having the necessary information to make such a decision.

If your opponent does not file their Defence or does so outside of the 28-day period, you may make a request for Default Judgment as described in the same scenario as a failure to acknowledge the claim (see Section 4 above).

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No fees are payable by you at this stage.

6. Pre-Allocation and Directions

If your opponent files a Defence to your claim, a Judge or Court Officer will look at your Claim Form, Particulars of Claim and Defence and make a decision as to which route your claim should go down. There are 3 routes or track a claim may go down: the Small Claims Track; the Fast Track; the Multi-Track.

The Court will make the decision as to which track a claim may go down by looking at the issues in the claim and making an immediate assessment as to the complexity of the case and also the value of the claim.

This decision normally takes around 4 weeks to be reached and you will receive a Notice of the Proposed Track.

When you receive the Notice, the Court will also make an Order that each party must file a Directions Questionnaire by a certain date (normally 2 weeks after the Notice).

The Directions Questionnaire will ask questions about:

1. Whether you are willing to settle your claim by way of mediation
2. Your thoughts on the proposed track
3. The venue of any proposed Final Hearing or Trial
4. Expert Witnesses
5. Number of Witnesses you intend to rely on.

No fees are payable by you at this stage.

7. Post Allocation and Directions

Once the deadline has passed for the Directions Questionnaire to be submitted, the Court will consider the answers given by each party and make a final Order confirming the track that the claim has been allocated to. It will also give directions as to how the case should be managed all the way up to a Final Hearing or Trial.

The Directions that are given will depend on the Track and the issues raised in the Directions Questionnaire.

For claims under £10,000 the claim is likely to be allocated to the Small Claims Track and therefore, the Court is likely to set a date for the Trial or Final Hearing. The Trial or Final Hearing is likely to be set for a date between 3 and 6 months from the date of Allocation. This allows time for each party to prepare their case and also make attempts to settle the claim.

The Court will also make an Order as to how each party should prepare for the hearing. Such preparations will normally include directions that each party should file and serve documents that they intend to rely upon to prove their claim. The directions will normally also indicate that each party should file and serve a witness statement relating to the claim. The Court will set a

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date for each direction or task to be adhered to. It is very important that the deadlines set by the Court are complied with as a failure to meet deadlines may result in your claim being automatically struck out (dismissed) and you being ordered to pay your opponent's costs.

The Court will also make an Order that you have to pay a Hearing Fee. The amount of the hearing fee will depend on the value of the claim. It can be between £25 and £335.

8. Preparing for Trial/Final Hearing

As previously advised, the Court will give directions to the parties to file and serve documents that they intend to rely upon to prove their claim. In addition, the Court will normally order the parties to file and serve witness evidence.

The preparation of such documents and witness evidence is key to proving your claim. Your witness evidence in written form will be the evidence that you give to the Court and will expand on your earlier Particulars of Claim. It will tell the full story of your claim and also make reference to the documents that you intend to rely upon.

As with your Particulars of Claim, your witness statement is finalised by a Statement of Truth and therefore the warnings given previously in respect of your Particulars of Claim regarding Contempt of Court apply here.

Your opponents will also be preparing documents and witness evidence to support their denial of your claim. You will not normally see a copy of their witness evidence until you have completed your evidence as witness evidence is normally mutually and simultaneously exchanged therefore this strengthens the importance that your witness evidence should cover everything you need it to cover in order to prove your claim. Your witness evidence cannot normally be changed after it has been submitted.

Witness evidence and documents will normally be exchanged and sent to the Court at least 7 days before the final hearing/Trial in order to allow each party and the Court to read over each other's documents and evidence and prepare their arguments.

9. Representation

In addition to preparing your own case in respect of documents and evidence, you may wish to consider representation.

In all cases, you can of course represent yourself at the Trial or Final Hearing of the matter. The benefit of this is that you know your own case and you know what arguments you want to make. However, as this case is personal to you, your feelings may cloud your judgment and therefore you make decisions which are not in your own best interests or are just 'rushed'.

You therefore should give due consideration to the possibility of employing someone to either represent you or at least assist you at the Trial or Final Hearing. The cost of employing someone to represent you or assist you at the Trial or Final Hearing can vary depending in the type of help required, the length of time you require their help and also the type of case.

A McKenzie Friend can be employed to assist you with the preparations for Trial and can sit

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with you at Court whilst your hearing is going on. They are not normally allowed to speak on your behalf or represent you and are just merely there to assist you with organising your papers whilst you make representations yourself. The costs of employing a McKenzie Friend on average can be around the £75 to £100 mark however, there may be some trainee solicitors or barristers willing to act in this way for free just for experience.

A Solicitor or Barrister can be employed to represent you at the Trial or Final Hearing. They are able to provide full assistance and representation and also argue your case on your behalf. They will provide you with advice on how your case should progress and also what arguments you should make. They will also normally advise as to whether your case will succeed or not. If you employ a Solicitor or Barrister to represent you, you will just merely be at the Trial or Final Hearing to give your evidence and answer any questions your opponent or the Judge may want to ask. The Solicitor or Barrister will be the person speaking on your behalf in respect of making arguments and asking questions of your opponent. The costs of employing a Solicitor or Barrister on average can be around £175 to £300. The costs will depend on amount of experience they have, the amount of time they have had to prepare, the length of the Trial or Final Hearing and, also the type of case it is.

10. The Trial/Final Hearing

The Trial or Final Hearing will normally be the end of your matter. The type of case, the arguments involved, the number of experts required, the number of witnesses required and the value of the case will determine the length of the time that the Court has allocated to the hearing.

You should arrive at Court in plenty of time before the start time and report your arrival to the Court staff. This will give you time to make any final preparations, meet your opponents and your representation and discuss your case if necessary.

When the Judge is ready you and your opponents and their legal representatives (if any) will be called in to the Court room.

Depending on whether each party has employed any legal representation, the Judge will normally make comments on the papers he has received or invite the legal representatives to do so. The comments made will normally just a brief summary of the case to ensure that the Judge has the correct papers in front of him.

The Judge will then invite you as the Claimant to commence the putting forward of your case. This will include the reading of your witness evidence whilst making reference to any documents you have sought to rely upon.

Once you have finished putting forward your case, your opponent will be invited to put forward their case.

Once both parties have finished, the Judge will then invite each party to ask questions about the other party's case and/or make challenges to the other's case. This will be the start of cross-examination.

During the above process, the Judge will continue making notes on any things he thinks are of

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relevance to the case and to assist him in providing his decision at the end. He may also ask questions himself for clarification purposes.

Once cross-examination has finished, each party will normally have the opportunity to provide a summary of why their case should win. When making such summary, reference should be made to the cross-examination stage and any discrepancies that have arisen as a result.

Once both parties have summarised, the Judge will give his decision on the case taking into account all the evidence and facts of the case. The Judge will decide who has won and lost and will also give his reasons for doing so. He will give his decision based on the law as it is.

He will also decide how much money; you are entitled to as damages or compensation for your claim.

11. Legal Costs

Once the Judge has decided who has won, he will normally discuss and decide the legal costs. In normal circumstances, the loser normally pays the winner's costs.

The legal costs involved include all time and expense spent in dealing with your claim, any out-of-pocket expenses, i.e. expert fees and fees for representation and, Court fees.

If you have been representing yourself at any stage during the proceedings then unless you can prove financial loss due to your dealing with the claim, you are able to charge an hourly rate of £19.00 per hour for all the time that you have incurred in dealing with the matter. This hourly rate or financial loss will form the basis of your claim for time and expense spent in dealing with your claim.

When deciding who pays the Legal costs of the case, the Judge will also have regard to:

1. The conduct both before and after Court proceedings were issued
2. The efforts made by the parties, if any, before and during the proceedings to try and resolve the case
3. How much of the claim has the winner won
4. The proportionality and reasonableness of the costs incurred
5. The amount or value of any money or property involved
6. The importance of the matter to the parties
7. The particular complexity of the matter or the difficulty or novelty of the questions raised
8. The skill, effort, specialised knowledge and responsibility involved
9. The time spent on the case
10. The place where and the circumstances in which work or any part of it was done

Taking all of the above into consideration, you must be prepared to accept that you may not recover all of your legal costs in full.

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12. Costs

White Collar can provide advice on taking Court action as well as assisting with the preparation of Court documents and also the managing of your case from start to finish at hourly rates starting at £20.60 per hour.

You will have to pay your own Court fees and pay for representation if required.

If you receive certain benefits or are on a low income, you can apply to the Court for help with your Court fees.

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