Small claims - Gibraltar

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1 Existence of a specific small claims procedure

1.1 Scope of procedure, threshold

In Gibraltar, the Supreme Court has a small claims jurisdiction which is also known as the small claims track. There is a monetary threshold of £10000 below which the small claims procedure is available. However, the sum in dispute is not the only factor taken into consideration. Other considerations include the type of claim and the amount and type of preparation required to deal with the case justly. In some circumstances simple cases with a value greater than £10000 can be heard under the small claims procedure providing the claimant and defendant both consent to this.

As well as considering the views of the claimant and defendant, the judge will take into account the following factors when deciding whether to allocate the case to the small claims procedure or whether instead to hear the case under the ordinary court procedure:

- The amount in dispute - which should not normally be more than £10000.
- The type of claim - these will usually be consumer claims (e.g. goods sold, faulty goods or workmanship), accident claims, disputes about ownership of goods, and disputes between landlords and tenants about repairs, deposits, rent arrears, and so on, but not possession.

The amount and type of preparation needed to be able to deal with the case justly will be taken into consideration by the judge when deciding whether the case should be allocated to the small claims track. The judge will have in mind that this procedure is intended to be simple enough for people to conduct their own cases without a solicitor's help, if they wish. The claim should require only minimal preparation for the final hearing, for example. Cases in the small claims track will not normally involve a lot of witnesses or difficult points of law.

If the claim is for less than £10000 but includes a claim for personal injury, or for housing disrepair to residential premises and damages arising from the disrepair, the case will not be allocated to the small claims track unless the amounts claimed in respect of personal injury, disrepair and damages are each no more than £1000.

Where cases for more than £10000 are heard in the small claims track different rules about costs apply. In such cases the winning party will be able to claim costs, including solicitor's costs, against the losing party. These costs cannot, however, be more than would have been awarded if the case had been dealt with in the fast track. More information about costs follows later.

1.2 Application of procedure

While most cases up to £10000 are heard under the small claims track it is not automatic. The judge considers the litigants' views when deciding upon the procedure under which the case will be heard. Even although the amount in dispute is less than £10000, the judge may choose to hear the case under the ordinary court procedure rather than the small claims procedure.

When a claim is disputed (or defended) the claimant will be sent a copy of the defendant's defence. The parties will also need to file an ‘Allocation Questionnaire’. The information the parties provide in the questionnaire will help the judge decide which is the most appropriate track for the case. If the parties consider that the case is one that should be dealt with as a small claim in the small claims track, he or she should indicate this in the questionnaire. However, even though the views of the claimant and the defendant will be taken into account, it is for the judge to decide to which track the case will be allocated.

As described above, the judge can decide to hear a case with a value of less than £10000 under the ordinary procedure. This decision is made at the outset of the case.

The judge has discretion to re-allocate the case from the small claims track to the ordinary procedure should he think fit. Where a claim is allocated to the small claims track and subsequently re-allocated to another track, the rules relating to costs on the small claims track will cease to apply after the claim has been re-allocated. The fast track or multi-track costs rules will apply from the date of re-allocation.

1.3 Forms

There are specific forms to be used in the small claims procedure and it is obligatory to use them.

In order to commence a claim the claimant will need to complete Form N1 which is available with notes for completion for both the claimant and the defendant. Once the claimant completes the form he or she should make one copy for his or herself, one for the court and one for each defendant. The court will send each defendant a copy. More information is available in the page Bringing a Case to Court.

As mentioned earlier, if the claim is defended the court will send a copy of the defence to the claimant and to both parties the allocation questionnaires.

If the judge decides to allocate the case to the small claims track the court will send the parties form N157 (notice of allocation to the small claims court) which provides information as to when the hearing is and what steps have to be taken in preparation.

Where the sum in dispute is greater than £10000 but both parties have agreed to have the case heard under the small claims procedure form N160 (notice of allocation to small claims track (with parties' consent)) is sent by the court. This also provides information as to when the hearing is and what steps have to be taken in preparation.

Where a judge decides that a claim can be heard solely by written evidence and without the need for a hearing the court sends the parties form N159 (notice of allocation to the small claims track (no hearing)). This states a date by which time either the claimant or defendant must tell the court if he or she objects to a decision by written evidence only. Should either party object then the claim will be dealt with at a hearing. The judge may treat a lack of reply as consent.

Where a party loses a hearing but neither party was present or represented at that hearing Form N244 (application notice) is used to apply to have the judgment set aside.

1.4 Assistance

The small claims procedure is designed to be simple so that persons representing themselves (known as litigants-in-person) can understand the proceedings easily. Where either the claimant or the defendant is a litigant-in-person the judge will take this into consideration and will conduct the proceedings in a way that allows the litigant-in-person to understand what is going on and what is required of the parties procedurally.

If the claimant or the defendant chooses not to have a lawyer, he or she can be accompanied at the hearing by someone who can speak on his or her behalf. This person is called a 'lay representative' and can be anyone the litigant chooses, such as a spouse, a relative, a friend or an advice worker. If possible, the lay representative should not be a witness. The lay representative cannot attend a court hearing without the person he or she represents unless the litigant has obtained the court's permission allowing the lay representative to represent the litigant in his or her absence.

Advice agencies may have difficulties in releasing staff to act as lay representatives at hearings and therefore it is advisable for a party to contact them as early as possible if their assistance is required. The advice agencies will inform the parties about whether or not they can provide assistance. Some lay representatives may want to be paid and the litigant must make sure that he or she knows exactly how much this will be. The judge can tell a lay representative who misbehaves to leave the hearing.

The litigant will be responsible for paying the fee of the lay representative he or she appoints, even if he or she wins the case. They should consider, therefore, whether the amount of the claim is worth such a cost. Furthermore, lay representatives who charge for helping may not belong to a professional organisation, and if the litigant is not satisfied with their help there is no regulating body or organisation to whom to complain.

Additional assistance is available to disabled litigants. If a litigant has a disability which makes going to court or communicating difficult, he or she should contact the court concerned which may be able to provide further assistance.

1.5 Rules concerning the taking of evidence

The small claims track is much more informal and the strict rules of evidence do not apply. The small claims track deals with simpler cases for lesser sums. Accordingly the court may adopt any method of proceeding at a hearing that it considers to be fair. The court is not required to take evidence on oath and the judge may choose to limit cross-examination should he or she consider this to be appropriate. The judge is however required to give reasons for his or her decision to limit cross-examination. The judge may choose to ask questions of any or all of the witnesses before allowing any other person to do so.

1.6 Written procedure

If the judge considers that the claim can be dealt with without a hearing using only written evidence, the court will advise the litigants using form N159 (see above). The notice will state a date by which time either the claimant or defendant must tell the court if he or she objects to a decision on written evidence only. Should either party object then the claim will be dealt with at a hearing. The judge may treat a lack of reply as consent. Providing neither party objects to the judge's decision to have no hearing, the case can be dealt with on paper only.

1.7 Content of judgment

In Gibraltar court judgments usually record only the judge's decision and any orders made to the parties. The judge is, however, required to make a note of the central reasons for his judgment unless it is given orally and tape-recorded by the court. The judge is permitted to give his reasons as briefly and simply as the nature of the case allows. He will normally do so orally at the hearing but he may give them later either in writing or at a hearing fixed for him to do so. Where the judge has decided the case without a hearing the judge is required to prepare a note of his reasons and the court will send a copy to each party.

1.8 Reimbursement of costs

There are restrictions on the reimbursement of costs. Currently the winning party may be able to claim reimbursement for the following costs:

- Any court fees he or she has paid;
- An amount of not more than £260 for legal advice if the claim included an application for an injunction (an order to stop someone doing something), or an order for specific performance (an order to make someone do something, for example, a landlord to carry out repairs), other than these categories no legal costs may be recovered;
- An amount of not more than £90 per day each for the winning party, and any witness he or she may have for loss of earnings due to attending the court hearing;
- Reasonable expenses to cover additional travelling and overnight stays for the party or witnesses;
- If the judge has given permission for use of an expert witness and that party subsequently wins his/her case, the judge may tell the losing party to pay something towards the cost. However, the judge cannot allow more than £200 per expert witness. This may not cover the full amount of the expert's fees, especially if the expert writes a report and attends the court hearing;
- Further costs may be ordered by the judge to be paid by a party who has behaved unreasonably;
- Where the financial value of the claim exceeds the limit for the small claims track, but the claim has been allocated to the small claims track by the judge, costs will be assessed in accordance with this track, unless the parties agree that the fast track cost provisions should apply.

1.9 Possibility to appeal

If the losing party wishes to appeal against the judge's decision, he or she will need permission to do so. If that party/litigant attends the hearing at which the decision is made, he or she can ask the judge for permission at the end of the hearing.

The litigant who wishes to appeal must have proper grounds (or reasons) to appeal. He or she cannot simply object to a judge's decision because he or she thinks the wrong decision was made.

If a litigant wants to appeal he or she must act quickly. The time within which the appealing litigant must issue his or her appeal is limited.

If the losing party was neither present nor represented at the hearing, he or she may apply for judgment made at that hearing to be set aside and the claim re-heard.

That party must make an application not more than 14 days after receiving the judgment. He or she should ask the court for a Form N244 (application notice) in order to make the application.

The court will tell the parties when they must come to court for the hearing of the application before a judge.

The judge will only grant an application for judgment to be set aside if:

The litigant/party had a good reason for either

- not attending or being represented at the hearing; or
- not giving written notice to the court;

and the party has a reasonable prospect of being successful at a re-hearing.

If the party's application is successful and judgment is set aside, the court will fix a new hearing for the claim. In a straightforward claim the judge may decide to deal with the case immediately after the hearing of the application.

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