

Blake Laphorn Tarlo Lyons' nursery and childcare news

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tackling a defended 'small claim'

Unfortunately, not all fees and payments are paid when they are due. You may have issued court proceedings to recover the debt but what do you do if the debtor, instead of paying the debt, files a defence to your claim and declines all reasonable attempts to settle?

Review the defence. If you conclude that the debtor is entitled to deny payment, then you should probably withdraw from the case. However, if you believe that the defence is spurious and filed to persuade you that the debt is too troublesome to pursue, you may decide to carry on.

One understandable concern is the legal costs to pursue the debt. If the debt is over £5,000 then, generally, the successful party will be entitled to recover from the losing party much of the legal cost incurred. You might therefore decide to pursue the claim through your solicitors in the hope of winning.

However, the court usually deals with debts of less than £5,000 under the small claims track, which is designed to provide a simple and informal way of resolving disputes. Generally, the successful party in these cases may not recover their legal costs (except for limited court fees and fixed costs).

Consequently, you may feel that the debt is not worth pursuing with legal representation. However you should consider pursuing the debt yourself without solicitors. The general procedure is set out below.

before the court hearing

Once a defence has been filed, the court will require you to complete and return an allocation questionnaire. The court will then send you an order stating that the case has been allocated to the small claims track and confirm the date and venue of the court hearing (which may not necessarily be your local court). That order will also direct you to file at court (by a specified date) and serve on the debtor copies of documents and statements from any witnesses that you wish to rely on at the court hearing.

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

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the hearing

A small claims track hearing will be informal. It is likely to be held, without wigs or formal robes, in the judge's room rather than in a courtroom. The judge will adopt whatever procedure he or she considers most appropriate for the hearing. The judge will usually give both you and the debtor an opportunity to explain your case and put questions to witnesses.

Typically, small claims track hearings will last somewhere between 30 minutes to two hours. At the end of the hearing, the judge gives the judgment.

after the hearing

Subsequent to the hearing, the court staff will prepare a formal order recording the terms of the judgment made by the judge and post a copy to you and to the debtor.

You will find useful information about the court process and related topics on the following court service website: www.hmcourts-service.gov.uk. For detailed information on the small claims track, click on the small claims link.

points to note:

- Make sure that you comply with all court directions within the timescale given.
- Wherever possible, make sure that the witnesses whose evidence you wish to rely on can attend at the court hearing with you.
- If you successfully obtain a judgment against the debtor but the debtor still fails to pay you, you will probably need to take legal advice to enforce the judgment.



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