

## Small Claims Telephone Mediation Service

One of the more cost-effective ways of pursuing a claim through the courts is through the small claims court - for claims up to a maximum of £10,000. However if the case is within this limit, but is not straightforward, then a judge may order that the case is dealt with through the full county court.

Before you make your determination a word of warning is in order: if you decide to bring a claim against your client for perhaps non-payment of fees you must make sure that you have undertaken all your services in accordance with the agreed terms. A client in receipt of a claim for unpaid fees very often uses as a defence the fact that the work carried out is in some way deficient, therefore justifying the non-payment of fees.

If you commence a claim through the small claims court it is highly likely you will be offered their mediation service in order to avoid the need for the case to go before the court. If the parties have an open mind, and are willing to compromise, this can prove a very effective way of resolving the dispute without the uncertainty of having the matter dealt with by a judge.

The process is very simple and could progress as follows:

An administrator from the court office would contact the claimant and invite them to indicate whether they would be willing to participate in telephone mediation. If the answer is yes then the defendant is likewise invited to indicate whether they would be willing to participate.

Whilst mediation is not compulsory, parties would be very wise to give serious consideration to utilising this mediation service in order for them to show that they have taken reasonable steps to resolve the dispute.

On the basis that the parties indicate a willingness to participate in telephone mediation, a court administrator makes arrangements with a mediator to conduct telephone mediation at a scheduled day and time. There is no charge for this, other than the fee payable to the court for commencing the initial claim.

On the agreed date, at the agreed time, the mediator telephones the claimant first to introduce himself and explain the process. It is anticipated that the telephone mediation will be concluded within about 1 hour.

The mediator then telephones the defendant and likewise introduces himself and explains the process.

The mediator then telephones the claimant back to listen to a brief explanation of the claim and explores whether there are any grounds for compromise.

The mediator then telephones the defendant to listen to a brief explanation of the defence and similarly explores whether there are any grounds for compromise.

There then follows a series of telephone calls between the mediator and each of the parties (separately) in order to explore whether there are areas of compromise/agreement. This process continues for the allocated hour (unless there is a quick agreement). If there is no agreement within

the hour (some mediators may be prepared to go a little beyond the hour if it appears an agreement might be reached) then the claim continues.

The process is remarkably simple and, providing the parties are not too entrenched, and are willing to move from their respective positions, is very effective at resolving the dispute.

The outcome of the mediation could be something other than money as the mediator is not constrained by the parties' rights under the contract (which any judge would be).

If an agreement is reached, the mediator drafts an agreement to send to the parties and the parties are expected to comply with this agreement. If the agreement is not complied with, then the claim can continue.

One question the claimant may ask is why they should settle for anything less than the full amount that they are trying to claim (if that is the outcome of the agreed telephone mediation). One argument might be that even though the claimant may succeed in their claim (perhaps in full) if the matter were to proceed to court there is no certainty that the defendant will comply with the judgement and further action may be necessary. In these uncertain times it could be the case, after all the various steps have been taken to try to recover money from the defendant (that has been awarded by the court), that the defendant then ceases trading. In such eventuality the old adage that "*a bird in the hand is worth two in the bush*" could certainly apply to the small claims telephone mediation service.

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