THE RESOLUTION OF SMALL CLAIMS

INTERIM REPORT

APRIL 2021

Contents

INTRODUCTION

1. The coronavirus pandemic has caused very considerable disruption to the delivery of civil justice. In coping with the difficulties caused by the lockdowns and the need for social distancing, individual court centres have adopted different methods of ensuring, so far as reasonably practicable, that most civil disputes continue[1] to be resolved without undue delay.

2. The large majority of claims determined at final hearings in the civil courts are small claims[2] with a value not exceeding £10,000.[3] The judiciary and court staff have been largely successful in ensuring that, despite the limitations on ability to hold attended hearings, cases of this value have progressed and when necessary hearings have continued to take place, some using remote means. It was the view of the Civil Justice Council that it was likely that lessons could be learned from the methods adopted within different courts to ensure that small claims continued to progress to resolution and that an overview was necessary so that best practice could be identified. Improvements in the resolution of such claims would reform the litigation experience for by far the largest group of court users; litigants in person with modest financial claims, maintain public confidence in the civil justice system and allow limited judicial and administrative resources to be properly focused. It is hoped that new online processes will allow small claims to progress more smoothly and efficiently (a probable by-product being an increase in the number of claims), but unless mediation or early neutral evaluation is successful many claims will still require a final hearing.

3. Rule 26.6 of the Civil Procedure Rules ("CPR") sets out that the small claims track is the normal track for any claim which has a value of not more than £10,000[4] and:
    a) any claim for personal injuries[5] where –
        i) the value of the claim is not more than £10,000; and
        ii) the value of any claim for damages for personal injuries is not more than £1,000;[6]
    b) any claim which includes a claim by a tenant of residential premises against a landlord where –
        i) the tenant is seeking an order requiring the landlord to carry out repairs or other work to the premises (whether or not the tenant is also seeking some other remedy);
        ii) the cost of the repairs or other work to the premises is estimated to be not more than £1,000; and
        iii) the value of any other claim for damages is not more than £1,000.

[1] Possession claims, which have been subject to a stay, being an exception.
[2] In the year to February 2021 small claims make up 77.8 % of the total number of final hearings in the civil courts.
[3] Prior to April 2013 the limit for small claims was £5,000.
[4] Rule 26.7(4) provides that the court will not allocate to the small claims track certain claims in respect of harassment or unlawful eviction).
[5] Rule 2.3 defines 'claim for personal injuries' as proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death.
[6] To be increased; see paragraph 22 post.

4. Cases allocated to the small claims track are usually conducted by litigants in person who can have limited understanding of court procedure. The subject matter/issues involved varies very widely and the law involved in the cases can be complex.

5. To enable a review of practice across the range of County Courts a Working Party was set up with experienced District Judges from large, medium and small court centres.

6. In undertaking the exercise of reviewing current practices the Working Party identified a number of issues in relation to the resolution of small claims beyond an overview of current practices.

7. An overarching issue is proportionality. The overriding objective (CPR 1.1) is to enable the court to deal with cases justly and at proportionate cost. The Working Party considers it debatable whether that the current approach to the final hearings of small claims under CPR 27, which, unlike the position under the County Court Rules, [7] treats a claim for £90 exactly the same as one for £9,999, and allows the same appeal rights as any other claim[8] adheres to this aim and also whether a disproportionate amount of the court's resources is devoted to small claims hearings in the lowest value cases. From the perspective of the court user the result is often delay and unnecessary complexity in the resolution of the dispute. However, the Working Party recognises that to many what could objectively be considered as relatively modest sums are very important. This issue also has to be considered in the context of a number of impending changes which will impact upon the pre-action steps before, progression and resolution of small claims. There is question of how many final hearings can and should be heard remotely and the linked issue of whether the court should have the ability (without the consent of the parties) to determine some lower value small claims by way of written judgment. The Working Party recognises that the view will vary on these issues and decided that its work should be in two phases. The first and interim report will cover the current approaches to the resolution of small claims and make recommendations as to best practice. During the second phase, which should include consultation, an expanded Working Party should consider the wider issues in relation to the resolution of small claims.

[7] Under Order 19 rule 3 County Court Rules 1981 any proceedings in which the sum claimed or amount involved did not exceed £1000 (leaving out of account the sum claimed or amount involved in any counterclaim) was referred for arbitration by a District Judge unless trial a trial was ordered on court on the grounds, inter alia, that a difficult question of law or a question of fact of exceptional complexity was involved (r 3(2)(a)), or that it would be unreasonable for the claim to proceed to arbitration having regard to its subject matter, the size of any counterclaim, the circumstances of the parties or the interests of any other person likely to be affected by the award (r 3(2)(d)). Personal injury cases were not excluded; see **Afzal & others -v- Ford Motor Co** [1994] 4 All ER 720. No inter partes costs were recoverable when a case proceeded to arbitration save for issue costs (unless there was unreasonable behaviour). Under CCR 19 (8), the award of the arbitrator was final and could only be set aside pursuant to on the ground that there has been misconduct by the arbitrator or that the arbitrator made an error of law.

[8] Including with a right to an oral hearing if permission is refused on paper (unless totally without merit).

THE PRESENT POSITION

Small claims track

8. The Small claims track is for claims of not more than £10,000. It has specific set of rules (Part 27) within the Civil Procedure Rules with the aim of setting out a proportionate method of dealing with straightforward cases of limited financial value. The procedure superseded the arbitration procedure under the County Court Rules Order 19.

9. Save when issued through OCMC claims within the small claims value limit are commenced using the same forms and procedures as claims of higher value and there is no automatic referral (the allocation of each case to a track; small, fast or multi, is considered by a judge).

10. Common types of case are:

- Road Traffic Accidents ("RTAs") (some with credit hire issues),
- contract dispute /consumer rights in relation to goods/services,
- consumer Credit Act 1974 cases,
- recovery of Parking Charge Notices,
- recovery of assigned credit debts
- property/building disputes,
- landlord and tenant issues.

11. There is a specific directions questionnaire (Form N180) and the rules anticipate that directions will be made through to a final hearing. Whilst the general powers of case management under CPR 3.1(2)(m) allow the court to take any other step or make any other order for the purpose of managing the case and furthering the overriding objective, including hearing an early neutral evaluation with the aim of helping the parties settle the case, CPR 27.6 states that the court may only hold a preliminary hearing in a small claim for set reasons which do not include early neutral evaluation.[9] There is a clear expectation that cases will proceed to final hearing with no intervening hearing.

12. Although a judge can order one[10] when considering whether to do so regard must be had to the desirability of limiting expense.[11]

13. The use of expert evidence is limited, and permission must be obtained in advance.[12]

14. Small claims are listed before District Judges[13] (and Deputy District Judges) with the large majority of cases given a final hearing with a time estimate of between one and three hours.

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[9] Including to enable it to dispose of the claim on the basis that one or other of the parties has no real prospect of success at a final hearing.

[10] CPR 27.6.

[11] CPR 27.6 (2).

[12] CPR 27.5. Often expert evidence is permitted on a single joint basis.

[13] A case allocated to the small claims track may only be assigned to a Circuit Judge with their consent; see CPR 2BPD para 11.2.

15. Given that complex issues of fact and/or law can be involved, judges are often faced with the need to achieve the difficult balance between the level of detail/depth of analysis with proportionality and time constraints, unlike the former position in relation to arbitrations under the County Court rules.[14]

16. The same right of appeal applies to a claim worth £90 as to one worth £9,000.

17. The court may adopt any method of proceeding at the final hearing which it considers fair[15] and strict rules of evidence do not apply at the final hearing. The hearings are required to be informal[16] and the normal procedure for a civil trial in the other two tracks is very rarely followed (evidence is not usually taken on oath).

18. The court may, if, but only if, all parties agree, deal with the claim without a hearing.[17]

Online Civil Money Claims

19. The Online Civil Money Claims ("OCMC") service was one of the first new digital services to be made available to the public as part of the Reform programme, and continues to be developed. It has been live as a pilot since 26 March 2018. Over 194,000 claims have now been issued. The service is available to litigants in person for claims up to £10,000 in value, where they wish to issue a claim against a single defendant. Currently, the service enables a claim to be issued and a defendant to be able to respond to a claim. Directions questionnaires and case management directions are then given either by a legal adviser[18] or a judge at a pilot court.[19] Cases are then transferred to the local court to continue on paper.

20. There are three "sub-pilots" operating within the pilot:
    a) An automatic 'opt-in' mediation pilot for defended cases up to £500;
    b) legal advisers drawing directions orders for defended cases up to £300; and,
    c) judges drawing directions orders for defended cases up to £10,000.

21. There has been consideration of whether it may be possible to provide further structure to the claims as presented using a "case builder" process which would ask a series of questions which would then determine how the claim was structured and classified.

[14] Under Order 19 rule 3 County Court Rules Any proceedings in which the sum claimed or amount involved does not exceed £1000 (leaving out of account the sum claimed or amount involved in any counterclaim) was referred for arbitration by the District Judge upon the receipt by the court of a defence to the claim. Under CCR 19 (8), the award of the arbitrator was final and could only be set aside pursuant to on the ground that there has been misconduct by the arbitrator or that the arbitrator made an error of law.
[15] CPR 27.8.
[16] CPR 27.8(2).
[17] CPR 27.10.
[18] Currently in cases with a value of up to £300.
[19] There are currently 19 pilot courts, but the number will be increased over 2021.

FUTURE CHANGES

Road traffic accidents small claims and other personal injury claims

22. From the 31 May 2021 changes introduced in the Civil Liability Act 2018[20] will come into effect[21] with the result that the limit for personal injury damages will increase from £1,000 to £5,000 for road traffic accidents ("RTA") not including pedestrians, cyclists, motorcyclists and horse riders.[22] At some future stage the limit for other personal injury claims (employers' liability and public liability ("EL/PL") may rise from £1,000 to £2,000). Tariffs[23] will also come into force for some whiplash injuries from road traffic accidents.[24]

23. Part 26 of the CPR has been amended, creating new rules for the allocation of personal injury claims.[25]The RTA small claims limit increase, along with new tariffs, will lead to more cases being processed as small claims. Claimants will in most cases have to pay their own legal costs, even if successful. For many the only option may be to represent themselves.

24. All RTA personal injury claims which will fall within the small claims track must be notified and negotiated upon within an online "Portal" (run by the Motor Insurers Bureau).[26] The Portal requires the parties to begin by discussing liability for the accident. If they agree about liability, the Portal provides a mechanism for obtaining a medical report (paid for by the "compensator" – normally the other driver's insurer),[27] and then negotiating a sum for compensation. If the amount of compensation is agreed and paid, there is no need for court proceedings.

25. When a claim initially advanced under RTA Small Claims ("RTASC") Protocol goes to court (e.g. due to a dispute about liability) the procedure is governed by PD27B. PD27B is divided into eleven sections each providing a set of rules for the different types of application e.g. for a dispute as to liability see section 2. Each type of application under PD27B is made using

[20] The changes do not apply to accidents occurring before 31 May 2021.
[21] See; Civil Procedure (Amendment No. 2) Rules 2021 and Practice Direction update 129.
[22] The £1,000 limit also remains when the Claimant is under 18 or a protected party or an undischarged bankrupt when proceedings start.
[23] There is no tariff amount for any type of injury other than whiplash.
[24] Section 3 of the 2018 Act provides that the amount of damages for pain, suffering and loss of amenity in respect of a whiplash injury shall be specified by regulations where the injury is because of driver negligence, and the injury does not exceed, or is not likely to exceed, two years (or where it would not have exceeded or been likely to exceed two years if the claimant had taken reasonable steps to mitigate). The Whiplash Injury Regulations 2021 are made under the Civil Liability Act 2018. Regulation 2 sets out the tariff amount. The tariff amount depends on the duration of the injury, and on whether the claimant also suffered one or more minor psychological injuries. The tariff amounts are set out in a table, and range from £240 (recovery within 3 months, with no psychological injury) to £4,345 (between 18 and 24 months, with a minor psychological injury).
[25] See CPR 26.5A, 26.6, 26.6A and 26.6B as amended or inserted.
[26] www.officialinjuryclaim.org.uk. The rules for the operation of the Portal appear in the RTA Small Claims Protocol.
[27] The full definition is at paragraph 1.2(9) of the RTA Small Claims Protocol https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965270/cpr-pap-update-feb-2021.pdf.

one of four new prescribed forms. If the application is the first time the case has come to court, the RTASC form effectively operates as a claim form. The court allocates a claim number which is used again if a further application is made later. A Court Pack[28] must be sent to the court with the RTASC form.[29]

26. The claim is automatically allocated to the small claims track.[30] Appendix B to PD27B contains standard directions for the more common types of claim. Their use is not mandatory.

27. Some hearings (about liability for the accident, an uplift of the whiplash tariff, or non-protocol vehicle costs) must be attended, in person or by video.

28. Certain claims for special damages which relate to vehicles cannot be made within the Portal e.g. those items which have been paid by a corporate third party, such as repairs funded by an insurer, or credit hire.[31] Although non-protocol vehicle costs cannot be sought in the Portal, they can be part of the ensuing PD27B claim.[32]

29. This new system means that some cases will progress from portal to the court, but then return to the Portal. For example, if liability is not agreed the claim passes from the Portal to the court, then, unlike the present position if the claimant wins, the court cannot deal with quantum at the same time.[33] The case must return to the Portal. If, having gone through a further Portal process, the compensator does not make an acceptable offer, the claimant will then take the case to court again.

30. The Working Party is unaware if the intention of HMCTS is that RTA claims referred under the new portal are to be offered a mediation appointment. Given the potential number of claims where the Claimant is a litigant in person, but also the limited resources of the service, the Working Party suggests that very careful consideration should be given before they are excluded form referral. In any event it believes that effects of the significant changes set out above, including the potential for a significantly increased number of RTAs to be conducted by litigants in person,[34] need to be considered in detail in the second phase of this work.

Damages claims project

31. The Damages claims project is the flagship of the County Court's digital reform programme. The overall aim of the project is to design an efficient and effective digital process for the

[28] If the claimant needs to start a court case, the Portal will indicate which court form has to be completed. It will then guide the claimant through a process of assembling a selection of the documents which have been uploaded, which must include any documents which the compensator specifies. Once assembled, these must be printed out to create a hard copy of what is called the 'Court Pack'.
[29] PD27B, paragraphs 2.6(1), 3.7(1), 4.6(1), 5.6(1), 6.6(1), 7.7(1), 8.7(1), 9.4(1), 10.7(1) and 11.7(1); http://www.justice.gov.uk/courts/procedure-rules/civil/cpr-129th-update.pdf.
[30] PD 27B paragraph 1.5(2)(a).
[31] RTASC protocol, paragraph 1.2(36).
[32] This is specifically provided for in Sections 4 and 5 of PD27B. The information which has to be provided to the Portal about non-protocol vehicle costs may not be sufficient, and the standard directions at Appendix B require claimants to go into more detail about them.
[33] Protocol, paragraph 6.14(1).
[34] See e.g. the concerns previously expressed by the Council in its report on ADR; para 64 below.

resolution of County Court damages claims which have no fixed value at the time of commencement (i.e. non-liquidated damages claims), supported and regulated by an appropriate set of rules, which is accessible to all users. The project is intended to integrate with and talk to other digitised processes within the County Court including the common components project, the OCMC service and the online possession project and the small claims RTA and EL/PL project and must be designed so that it can in due course seamlessly interact with other domestic jurisdictions including the High Court, Tribunals and the Family Courts.

32. It is recognised by those designing the scheme that an efficient and effective digital process for the resolution of County Court damages claims is one that:

a) enables the parties, and if necessary, the court, to resolve disputes efficiently, easily, justly and at proportionate cost;
b) makes efficient and effective use of technology;
c) is straightforward for a lay person to use;
d) facilitates and encourages parties to resolve some or all of their differences at every stage and does not proceed on the basis that each dispute will be determined through formal judicial intervention;
e) takes account of existing circumstances including lessons learned during the Covid pandemic; and,
f) does not replicate civil procedure that is designed for non-digital use, unless to do so is compatible with an efficient and effective digital process.

33. When considering issues during the second phase of this work it will be necessary to have regard to the progress of this project as the matters set out above overlap with potential steps to improve the processes involved in the resolution of small claims.

DATA

34. The data provided in this paper is management information taken from the internal HMCTS case management system. It is intended for illustrative purposes only and does not constitute Official Statistics.

35. Please note the following information regarding the internal HMCTS case management system data:

> *"(the) figures reflect the data held on the relevant case management systems and hence have some definitional and timing differences from the official statistics. They are subject to the data quality issues associated with large administrative systems, including the late reporting of cases and regular updating of case details, which can lead to the figures for previous months' being revised each publication. These revisions are generally small and do not usually change the overall picture of performance. The Official Statistics provide a more comprehensive view of a range of statistics related to court systems, including HMCTS performance, putting the figures in context and analysing the key aspects. Users are advised to use the official statistics for most purposes and to use the published management information only to understand the very latest high-level position."*

The number of claims

36. Table 1: Number of claims issued

Year	Number of claims
2017-18	1,496,988
2018-19	1,562,995
2019-20	1,562,335
2021-21[35]	*1,054,706*

37. Table 2: Breakdown by value[36]

Year	Up to £500	£501 - £1000	£1001+
2017-18	712,562	366,299	418,127
2018-19	776,914	360,042	426,039
2019-20	731,464	336,839	458,052
2020-21[37]	*259,025*	*134,055*	*237,449*

[35] Unofficial figure/estimate to year to end of February 2021. Civil Quarterly Statistics will be available in due course.
[36] There is no breakdown in the value band £1,001 –£10,000. The believes that further breakdown by value is needed given the impending future changes.
[37] These figures relate to the 630,529 claims issued to December 2020 and are taken from the Civil Justice Quarterly Statistics at https://www.gov.uk/government/collections/civil-justice-statistics-quarterly.

38. Table 3: Cases allocated to the small claims track

Year	Total Claims Allocated to Small Claims Track
2017 – 2018	87,638[38]
2018 – 2019	92,649
2019 – 2020	109,294
2020 - 2021[39]	*78,362*

The progress of claims

39. The guidance to courts is that 70% of small claims hearings (i.e. cases which do not settle) should be concluded i.e. any final hearing should take place within 30 weeks of receipt by a court centre.[40] The pandemic has made it extremely difficult to meet this standard in any court centre given the limited court room space.

40. Official HMCTS timeliness statistics are produced quarterly.[41] Figures to the last quarter of 2020 show that the national average was 49.1 weeks. The best performing region was Humberside with 36.2 weeks, and example of a region with a large court centre, Avon, Somerset and Gloucestershire including Bristol, was 35.5 weeks. Birmingham, which has introduced a practice to deal with a backlog of cases and will be considered in detail below, was significantly above the average figure (54.2 weeks). Current management information allows some tentative further insight for the year to the end of February 2021 showing equivalent figures of Humberside 35.4 weeks; Avon, Somerset and Gloucestershire 38 weeks; and Birmingham 68.3 weeks; although this should be treated with caution as noted in paragraph 35 above.

The impact of Covid

41. For the year to the end date February 2021 there were 84,559 allocations to the small claims track compared to 112,483 allocated in the same period up to February 2020) - a reduction of 33%.

42. There were 33,253 small claims final hearings in the year to end of February 2021 as compared with 49,533 for the equivalent period to February 2020 - a reduction of 25%.

43. 60.7% of small claims settled after allocation in the year end to February 2021 compared with 56% to the year end of February 2020 - an increase of nearly 5%.[42]

44. The reasons for the reductions in issued cases and final hearings (and the increased settlement rate) are unknown, but may relate in part to the practical and financial

[38] This figure shows that a very large volume of cases do not reach the allocation stage. Of the 1,633,954 civil claims issued in the year to April 2018 default judgments were entered in 1,125,642 cases (68.89%).
[39] As with footnote 35 above this is an unofficial figure/estimate to year to end of February 2021.
[40] The Working Party is unaware of the provenance of the 30 weeks figure.
[41] Known as one performance truth or "OPT".
[42] Unofficial figure/estimate to year to end of February 2021. Civil Quarterly Statistics will be available in due course.

difficulties caused by the pandemic, and as such cannot be taken as establishing a reliable guide to post-pandemic rates.

MEDIATION

Small Claims Mediation Service

45. HMCTS has offered a free service called the Small Claims Mediation Service ("SCMS") for over a decade for specified money claims up to a value for £10,000. Parties are invited to consider opting-in to mediation once a case is defended. Unless both parties opt-in at this stage (so it is an "opt-in" service) the case is transferred to the local court, where a judge will consider allocation to the small claims track and directions through to a final hearing. At this stage, if the judge deems the case suitable for the service, the directions order may again invite parties to consider opting-in to mediation.

46. Referrals to mediation now come from different entry points, CCMCC ("County Court Money Claims Centre") (paper), MCOL ("Money Claims Online") (legacy), OCMC pilot referrals (see below) and judicial referrals. The vast majority (94%) are pre-allocation cases with approximately 15,000 mediations being conducted per year.

47. In the year April 2018 – March 2019, 39,095 claims were referred to the SMCS, but only 14,286 mediations took place (36% of cases referred) of which 8,623 settled (60.45% or 22% of cases referred). As at March 2020 nearly 68% of cases were sent to courts without having a mediation appointment.[43]

48. The Working Party considers this data starkly evidences the lack of resources within the service at this point.

49. The figures for 2020/21[44] show that 25,691 cases were referred to mediation (a projected drop of over 11,000 cases or 28% on the figures for 2018-19) with 16,811 mediations taking place, an increase of 2,525 or 17% in the number of mediations. 65% of cases referred of which 9,347 settled (55.6% and 36% of cases referred). The percentage increase in the number of cases referred to mediation has to be set against the marked drop of 28% in the number of referrals. If, as is anticipated, the number of referrals increases after the pandemic restrictions have been lifted, then unless significant further resources are allocated to the service the percentage of cases which are referred but do not receive an appointment is likely to rise.

50. The system is based on maximum one-hour telephone mediation appointments (with no additional preparation time). Appointments are bulk listed to a team of mediators in two sessions - 08:00 to 12:00 and 13:00 to 16:30. There are no individual appointments. Where settlement terms are agreed, the mediator drafts a formal agreement which is then enforceable in the event of non-compliance.

51. The mediations are booked automatically with no triage.

52. The issue of the resourcing of the service is of long standing. From the initial HMCTS pilot in 2007 with one mediator, the mediator resource steadily increased to a peak of 20 FTE in

[43] Of the 49,926 cases referred to mediation only 16,066 had mediation appointments (32.17%).
[44] Unofficial figures to the end of February 2021 (see paras 34-35).

2011 but then reduced to 13.9 FTE[45] by mid-2019, due to retirements and staff movement. The effect on the number mediations is set out above; with 64% of cases referred to mediation within this year did not receive an appointment. This despite the fact that Lord Briggs had identified the lack of resources and the inability to provide appointments to all those who opted for mediation both in his interim report in December 2015 (paragraph 2.30)[46] and final report (paragraph 2.15).[47]

53. In December 2018 it was noted within the Civil Justice Council report on ADR ("Alternative dispute resolution") that:

> *"Fears were expressed as to the extent to which the Small Claims Mediation Service was currently sufficiently resourced. In particular there was a concern that by the time the personal injury limit has been increased… the resulting massive increase in the workload of the small claims mediation service (and indeed the Courts themselves) would be crippling."* [48]

It made a specific recommendation (number 12) that small claims mediators and the SCMS needs to be fully resourced.

54. A recruitment campaign was launched in September 2019 and the mediator resource increased to 19.3 supported by an admin resource of 20.9 FTE. The number of mediators has recently increased from to 28 FTE (with 20 support staff).

55. Members of the Working Party were familiar with the reports that the small claims mediation appointments have in the region of a 60%-65% settlement rate and believe that the success of the mediation hearings is well known across the judiciary. However, members were well aware (without knowledge of the statistics) that in recent times many cases referred to mediation did not receive an appointment and that there was widespread belief amongst District Judges that the system could not cope with the number of small claims suitable for mediation. This impacted upon judicial referrals when cases were being considered for the purposes of allocation/directions.

56. The Working Party believes that the vast majority of District Judges continue to be dismayed by what they perceive to be a continuing failure to adequately resource the small claims mediators/mediation service notwithstanding the express recommendations of two reports

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[45] Full time equivalent.

[46] "… the small national team of only 14 mediators (former court back office managers) achieve a remarkable current success rate in settling 70% of the cases referred to them. Unfortunately, despite conducting up to five of these simple mediations a day, there are only enough mediators to service about 35 to 40% of the national demand." See https://www.judiciary.uk/wp-content/uploads/2016/01/ccsr-interim-report-dec-15-final1.pdf.

[47] "The present position is that the period within which to arrange a mediation, together with the contents of the form are both under review, steps have been taken to increase the number of mediators from 14 back to the original 17 and to introduce a second mediation appointment if the first is not suitable. This is likely to increase the proportion of small claims litigants able to obtain this service, but still only to a relatively modest extent". See https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf.

[48] Paragraph 4.13; https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018.pdf.

and internal reviews. Every judge consulted reported complaints by litigants that they wanted to have a mediation appointment but did not receive one.

57. The success of judicial mediation within case management will be considered below. The Working Party believes that it is likely, if not highly likely, that a significant percentage of cases which settled after judicial intervention at a preliminary hearing would have settled before the case reached a court if a mediation appointment had been offered. Adequate resourcing of the service is needed based on the relative costs of the time of a mediator (administration) as opposed to that of a judge (and administration) alone.

58. In February 2020 (when 66% of cases were sent to courts without having a mediation appointment fixed) a review was undertaken by HMCTS. It was reported that the limitations of the appointment booking system was a factor[49] together with a fixed 28-day stay for mediation so as not to delay the claim, party unavailability, party lack of contact and cancellations resulting in wasted mediator resource.

59. As a result of the review and the Working Party understands that recent improvements to the service have included:

a) a revised listing system which will increase capacity by over 30% with effect from 6 April 2021;
b) the recruitment of 8 new mediators (appointed into role in August 2020);
c) the consideration of 'intelligent listing' to identify possible options to see if there is a better way to list some appointments depending on parties or types of claim;
d) the consideration of 'not conducted' cases involving review of data to identify any patterns and trends and reasons for appointments not proceeding;
e) a new format of appointment email to commence from 6 April 2021;
f) from 29 March 2021, revised text messages (and increased frequency of messages); telling parties to read their email information and giving the mediation appointment date.

60. It is intended that these revisions to the service will produce a significant improvement in performance. The Working Party welcomes the changes and the believes that the target should be that no case in which the parties have opted into mediation should reach a court without a mediation appointment having been offered. If this standard is not achieved soon, then further investment in the service should be considered.

61. There is the complex, linked issue of whether there should be compulsory or default mediation (i.e. opt-out rather than opt-in) for small claims. In the OCMC an "opt-out" pilot (as opposed to the normal "opt-in" process was started in September 2019 for defended claims, initially up to £300, then raised to £500. Unless a party specifically opted-out the claim was referred to mediation. The opt-out rate has been surprisingly high with the figures to May 2020 showing that 54.8% of defendants opted-out and 18% of claimants have opted-out; an overall opt-out rate of 72.8% (this was higher than the figure for effective opt-out for non-pilot cases of 65.8%). The Working Party understands that HMCTS is analysing the reason for the unexpectedly high opt-out rate and that further information may be available when considering wider issues in the second phase of this work.

[49] A new diary system and administration structure was put in place in June 2020.

62. The issue of court ordered/compulsory mediation was addressed by the Civil Justice Council in its report on ADR (paragraphs 4.22-4.25) and is now to be addressed again by a further Working Party.[50] As with the analysis of the opt-out pilot it is hoped that the report of the Working Party will be available for consideration at the second phase of this work.

Other mediation/ADR options

63. In his final report published in July 2016 Lord Briggs recommended that HMCTS:

> *"Re-establish a court-based out of hours private mediation service in County Court hearing centres prepared to participate, along the lines of the service which existed prior to the establishment and then termination of the National Mediation Helpline."*[51]

He stated in relation to an online court:

> *"…. I have repented of the view that a sufficient model for stage 2 of the Online Court is to be found in the existing Small Claims Mediation service run from Northampton Bulk Centre, and provided by experienced but not legally qualified employees of HMCTS working mainly from home on the telephone. I have no doubt that it (or an expanded version of it) will be an essential part of the stage 2 conciliation offering, but it will be unlikely to be suitable for cases at the higher end of a court with jurisdiction up to £25,000, and there may be many cases at all levels of value which would benefit more from some other kind of conciliation process, such as ODR, judicial ENE or private mediation, such as used to be available under local County Court out of hours schemes or, latterly, from the National Mediation Helpline prior to its early demise."*[52]

64. The 2018 Civil Justice Council report on ADR:[53]

> *"The availability of mediation was discussed by a number of Respondents. In the context of the local mediation pilots which were currently being conducted and which it is hoped will provide a source of proportionate and inexpensive local mediation services. Respondents regretted the demise of the National Mediation Helpline"*.[54]

65. A third-party mediation pilot scheme was run at Central London, Exeter, Barnstaple and Manchester County Courts relying on judicial referral. The take up was generally low. In the first year of the pilot a total of 200 cases were referred for mediation across the three

[50] Headed by William Wood QC.
[51] Paragraph 12.15 recommendation 2. By way of example of a third party service His Honour Judge Gore QC informed the Working Party that in his annual Designated Civil Judge report for Merseyside for 2011/2012 he set out that : "There were 1153 referrals to the Cheshire and Merseyside Small Claims Mediation Service, 1043 from Liverpool alone, of which the uptake was an impressive 58% and more than 70% of mediations resulted in settlement".
[52] Paragraph 6.112.
[53] The Civil Justice Council resolved in January 2016 to review the ways in which ADR was encouraged and positioned within the civil justice system in England and Wales. An interim report was published in October 2017 and the final report in December 2018.
[54] Paragraphs 4.8-4.9.

centres. Of these only 35 (18%) opted to try mediation, with 16 of those (46%) subsequently settling.

66. The Working Party believes that there must be a symbiotic relationship between the judiciary (who refer cases) and local mediation providers (who provide the service for referred cases) before local schemes can achieve significant take up by the parties. If there is insufficient local mediation provision then judicial referrals will drop off, however without adequate referrals it is difficult to establish a viable local scheme. The Working Party suggest a co-ordinated national drive to establish local mediation schemes is needed, building on the current keener focus on mediation and initiatives following on from the Civil Justice Council report on ADR (an example being the OCMC opt-out pilot). [55]

67. More recently issues with possession cases have led to the Ministry of Justice working with the Society of Mediators[56] to provide a pilot third party mediation service for possession claims. The system commenced in February 2021 with mediation available after the review stage ("R Hearings") in suitable landlord and tenant cases. It is voluntary and free of cost for the parties. The pilot will operate until the summer and will be evaluated.[57]

68. The Working Party believes that the use of local private mediation schemes should be an option available for small claims and suitably encouraged within case management.[58] If at the directions stage both parties have indicated a willingness for mediation and the claim is of a nature and complexity that means a telephone mediation is not suitable then a judge should be able to refer the parties to external third party mediation (with reference to a locally approved list). This would save judicial resources and enable longer mediation meetings.

69. The Working Party has some concerns that the encouragement and re-introduction of local mediation options may lead to significant regional variation (a "postcode lottery") as such schemes may only be viable in areas with higher populations unless there is national funding (which the Working Party would prefer but recognises may not be possible). The Working Party suggests a review of the mediation pilots and national consultation with mediation providers with the aim of the availability of third-party mediation for all claims (albeit that travel may be necessary from some courts to larger centres). An initial step could be to set up a fresh pilot scheme in a court with a strong local mediation network (e.g. Bristol) to include claims across all tracks (i.e. small, fast and multi-track), possibly with the provision of facilities within court building operating hours.[59]

[55] https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018-2.pdf.
[56] After a tender process by the Ministry of Housing, Communities and Local Government and the MOJ.
[57] There are issues peculiar to possession claims mediations which means that there are challenges which will not be faced in many small claims disputes.
[58] Mediation may be particularly useful in more complex cases where the final hearing would be two hours or more.
[59] E.g. waiting rooms could be allocated for mediations between 16:00-18:00. This would involve no extra cost to HMCTS as larger court buildings typically stay open until 18:30.

LISTING PRCTICES

Geographical variations

70. There are significant regional variations regarding case progression and listing of small claims hearings. This is unsurprising given the size range of Court Centres from one with 19 resident District Judges through to courts with a single resident judge. Also, practices have changed in some centres given the need to have remote hearings when possible.

71. The Working Party members are based at large, medium, and small-sized court centres so were able to provide an overview of the spectrum of listing practice from individual experience and also consulted with other court centres.

Larger-sized court centres[60]

72. Prior to the pandemic a common, but not universal approach, in large and medium sized courts was the provision of directions through to back-to-back lists for final hearings with over-listing[61] and reliance upon some cases settling.

Central London

73. The Court has one day small claims lists twice a week with 3-6 judges sitting, depending upon the availability of fee-paid judiciary. A back-to-back system was used for many years, but the listing practice has recently changed as the court administration found the lists difficult to organise and sustain. Data support the view that they had little beneficial effect upon listing times. Currently, cases with a time estimate of two hours or more are listed in the morning with shorter cases in the afternoon (it is also not uncommon to have day cases). There will be 4-5 cases usually listed per judge on the basis that by the time of the hearing, due to the rate of settlement, the result is usually a manageable list with relatively few cases ever being stood out.

74. There are also "blitz sessions" within the London courts which utilise courtrooms at the Royal Courts of Justice during the Easter and summer vacations. This has been running for the last three years or so and is considered successful, with cases being heard by Deputy District Judges and overseen by a full time District Judge. Small Claims are drawn from the various London courts.[62] For the week commencing on 12 April 2021, there will be 10 courtrooms with 10 Deputy District Judges sitting per day dealing initially with 10 cases and then 18 unassigned cases on a back-to-back basis. Over a two-week period, this will provide hearings for approximately 300 small claims. Over the summer vacation the aim is for the resolution of about 1000 small claims.

[60] A court centre with at least four resident District Judges.
[61] Taken against available judicial hours for a day.
[62] The administration is not run from Central London County Court.

Birmingham

75. The practice currently adopted at Birmingham is considered in detail below under regional initiatives. Prior to the introduction of this new practice, the policy was to provide standard directions through to block listed, in person, final hearings before four judges twice a week; averaging 60 listed cases per week.

Liverpool

76. There is a dedicated judge who provides initial triage of all cases. More straightforward claims, such as those concerning parking fines, low value credit hire and simple debt are listed for final telephone hearings. All other matters are currently listed in the first instance for telephone hearing with standard directions provided in advance to enable the matter to proceed as a final hearing (i.e. cases are not listed for directions/ENE ("early neutral evaluation")/mediation hearings). However the judges who deal with the hearings can either resolve the matter as a final determination on hearing the parties, or if it is apparent that further directions are required, including the need for face-to-face hearing, provide these. The judges are also able to provide ENE at this stage if the parties consent.

Leeds

77. Before the pandemic there was a triage system whereby files were considered 10 days before the listed date. A check was made to see if there had been compliance with the directions e.g. as regards the filing of evidence and if the time estimate remained realistic. Some cases were struck out for non-compliance with orders and some taken out of the lists (e.g. with unless orders). It has proved problematic to triage all cases during the pandemic due to reduced staff resources. PPI claims are listed through preliminary hearings.

Newcastle

78. There is a new initiative solely in respect of PPI compensation claims which are being listed for an early neutral evaluation hearing before a salaried District Judge for 45 mins by telephone. The thinking behind the initiative is that experience has shown a very high percentage of these cases settle but they tend to settle close to the hearing date with consequential disruption to listing.

Medium-sized court centres[63]

Guildford

79. Prior to the pandemic there was no regular system for triaging of small claims and few preliminary hearings before the final hearing date. Claims were given a hearing date at the directions stage with the anticipation that the settlement rate/automatic strike out for non-payment of fees etc. would usually mean that the lists on hearings days were manageable. It was rarely necessary to stand out any claims.

[63] Courts with at least three District Judges sitting each day.

80. As a result of the pandemic a decision was taken to consider the files two days in advance of the hearing. The main driver for the change was that as most small claims hearings were conducted either by CVP or by BT MeetMe, it was difficult to run a true back-to-back list, with a judge taking cases as soon as they had the time, as a specific invitation needs to be sent out to the parties. If too many cases remain listed for the number of specific hearing slots available before each judge some cases are stood out. Cases where no papers have been filed by either party are likely to be removed from the list. Although there are no precise figures on the number of cases stood out, it is unlikely to be more than three per block list.

81. As regards hearings the general listing pattern is that small claims are block listed on alternate Wednesdays. Five DJs/DDJs sit on a back-to-back list, with nine hours of cases listed per judge per day. Claims listed for 90 minutes or less are listed in slots at 10:00 and 11:30 and two-hour claims are listed in the afternoon. Given the higher likelihood that it will be contested then for many other types of claim one RTA case is listed per slot between all five judges. As with Central London listing there is also a "Blitz" day with dedicated back-to-back RTA lists once per month, with four judges sitting – six RTAs listed at 10:00 and four in each of 11:30 and 14:00 slots.

82. Pre-trial review hearings are listed in all PPI claims, forty-five 30-minute PTRs listed in a back-to-back list before three full time DJs who have expertise in relation to these claims. Three hearings are listed before each judge in slots at 10:00, 11:00, 12:00, 14:00 and 15:00. PPI final hearings are listed in back-to-back lists with 10 hours listed per judge in a day. Figures from the most recent back-to-back list resulted in approximately one third of cases going forward to trial following the PTR, a saving of eighteen days of judicial time (thirty 3-hour trials, ninety hours = 18 sitting days).

Cardiff

83. When cases are received the file is considered for allocation and directions through to a final hearing. Preliminary hearings are only held in a very limited number of cases e.g. those involving expert evidence or complex evidential issues towards the higher end of the financial range. There is no system of either early evaluation or triage hearings.

84. As for hearings they are listed before three judges, block listed, back-to-back one day a week (usually one salaried judge and two deputies). The lists are divided into blocks of 1-hour cases, 1.5 hours and 2 hours. Any hearing with a time estimate longer than two hours is given a fixed date.

Birkenhead

85. There is a dedicated judge who provides initial triage of all cases. Cases which are not "simple and straightforward" (such cases being given directions through to a final hearing) are listed for an initial 30-minute ENE/directions hearing listed (sometimes extended to 60 minutes).

Gloucester

86. Building dispute claims with a value in excess of £2,500 are listed for a preliminary hearing with ENE and the aim of judicial assistance with settlement negotiations. These disputes are

considered to merit separate listing given the potential need for expert evidence and more complex directions e.g. for Scott Schedules.

Walsall

87. A system of triage is operated; 13 days prior to a small claims hearing day (block listed) staff refer the files to a judge for unless orders where parties have failed to comply with the order to file and serve evidence at least 14 days before the hearing. In the event of failure to comply with these orders claims are struck out, removed from the list, listed for 15 minutes for a re-instatement application.

Croydon

88. All small claims are given directions through a final hearing but are assessed/triaged prior to the final hearing by a salaried District Judge.

Smaller-sized court centres

Bodmin

89. Bodmin usually sits with a single District Judge (there is only accommodation for one judge unless a Magistrates Court become free). It is considered very difficult to have any system of early neutral evaluation or preliminary hearings which may disqualify the resident District Judge from taking the final hearing. Cases are given directions through to final hearings.

Hereford

90. Prior to the pandemic most small claims were listed straight to a final hearing in a block list where listing was 2-3 times the available judicial time. Time estimates within block lists could not exceed 2 hours. Some preliminary hearings were listed in more complex cases (e.g. building disputes) when judges would usually encourage settlement but ENE was not possible given that it is a single judge court (so as with Bodmin undertaking ENE would disqualify the resident District Judge from taking the final hearing).

91. Due to the issues caused by the pandemic (which resulted in the Hereford being unable to hold any hearings for four months) a practice was introduced in Hereford and Worcester courts whereby all small claims (other than RTA or PPI claims)[64] have a DRH/preliminary hearing after disclosure/exchange of evidence which involves early neutral evaluation and encouragement to settle. The practice is considered in detail below.

Overview

92. As the analysis above reveals there is no nationally consistent practice as regards the procedure for resolving small claims. The majority, but not all, large and medium-sized courts operate some form of triage alongside the provision of directions. Whilst triage seems a sensible step the Working Party believes that the lack of adequate administrative support/staff has prevented a system of triage being implemented in some court centres.

[64] RTA liability claims are listed through to a final hearing. PPI claims are block listed.

93. Some courts have preliminary hearings, but save for Birmingham and Hereford, none has a system of such hearings in all cases. There is some use of “Blitz” courts to address backlogs.

REMOTE HEARINGS

94. As a result of the pandemic the judiciary had to consider whether remote hearings could provide a proper alternative to attended hearings in a range of circumstances, including the final hearings in small claims. In so doing careful consideration was, and continues to be, given to the advantages and limitations of remote hearings. A new Practice Direction 51Y entitled "Video or Audio Hearings During Coronavirus Pandemic" came into force on 25 March 2020 accompanied by a remote hearing protocol.[65]

95. The main three methods of conducting a hearing remotely have been through the telephone, Cloud Video Platform ("CVP") and Microsoft Teams.

96. Anecdotally, more claims seem to be attended by both parties remotely, perhaps because a remote hearing is easier and less intimidating than attending court.

Telephone

97. CPR PD23 paragraph 6.2 provides that:

> ***"6.2** Subject to paragraph 6.3, at a telephone conference enabled court the following hearings will be conducted by telephone unless the court otherwise orders –*
> *a) allocation hearings;*
> *b) listing hearings; and*
> *c) interim applications, case management conferences and pre-trial reviews with a time estimate of no more than one hour.*
>
> ***6.3** Paragraph 6.2 does not apply where –*
> *a) the hearing is of an application made without notice to the other party;*
> *b) all the parties are unrepresented; or*
> *c) more than four parties wish to make representations at the hearing (for this purpose where two or more parties are represented by the same person, they are to be treated as one party)."*

98. Although only directly concerning applications, the rule enshrines the view that normally a telephone hearing should not exceed one hour and would not be appropriate if all parties are unrepresented.

99. Many court centres have faced difficulties with litigants failing to provide telephone numbers or e-mail addresses prior to hearings, resulting in already limited administrative resources being used in contacting parties. The Working Party believe that this drain on resources cannot continue and that the parties should be required to give information in relation to remote hearings before directions are made.

[65] https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_.GenerallyApplicableVersion.f-amend-26_03_20-1-1.pdf.

100. The orders sent out by most court centres give the opportunity to object to a hearing by CVP or Teams.

Video Hearings

101. Cloud Video Platform, a platform developed for HMCTS was rolled out for use ahead of the date anticipated by the reform programme to assist with the sudden and huge increase in demand for remote hearings. With increased training and continuous improvement CVP is now more reliable than it was initially.

102. The HMCTS video hearings service is the planned successor to CVP. The service uses the same underlying Pexip video conferencing technology engine as CVP. Over and above this, the video hearings service has designed and developed specific features to replicate the experience, formality and solemnity of court and tribunal hearings.

103. Many judges began to use Microsoft Teams before CVP became available and have continued to use it. Some prefer Microsoft Teams to CVP citing various issues.

When is a small claim suitable for a remote final hearing?

> *"it is time for a more reflective and less crisis-driven approach to remote hearings, or those with a remote element. With an eye firmly on the middle distance, we must seize the good things. It is clear that we will not be returning to the position as it was in early 2020"*.[66]

104. The method by which all hearings, including remote hearings, are conducted is always a matter for the judge(s), operating in accordance with applicable law,[67] principles/rules[68] and practice directions.

105. A vitally important issue is the extent to which many litigants in person are able and happy to engage in remote hearings. The Working Party believes that this has been the subject of only limited investigation and greater consultation and analysis are required on the issue; see generally the Civil Justice Council report on the impact of Covid on civil court users.[69]

106. It is inappropriate to set any hard and fast rules as to when hearings are suitable to be conducted remotely (and if so by which means).[70] However, the Working Party believes that

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[66] Speech by Sir Julian Flaux, Chancellor of the High Court to the Chancery Bar Association, 10 March 2021; https://www.judiciary.uk/wp-content/uploads/2021/03/ChBA-speech.pdf.

[67] If enacted the relevant provisions of the Police, Crime, Sentencing and Courts Bill will provide a power for the temporary provisions in the Coronavirus Act that enabled the observation of remote hearings to be made permanent.

[68] The principles of open justice remain paramount and must be taken into account albeit that many small claims are relatively modest financial disputes between private parties.

[69] The report published in June 2020 followed rapid review led by Dr Natalie Byrom of the Legal Education Foundation; https://www.judiciary.uk/announcements/civil-justice-council-report-on-the-impact-of-covid-19-on-civil-court-users-published/.

[70] It is often impractical, given limited staff resources to broadcast and/or allow public access to telephone hearings. It is easier to permit public observation of CVP/Teams hearings.

some guidance should be given to enable consistency across the country and that this issue should be subject to more detailed consideration during the second phase of this work.

ISSUES TO BE ADDRESSED

Information pre-action

107. There is currently no pre-action protocol specifically for small claims[71] (see the position in relation to the protocol for RTA claims set out at paragraph 22 above). The Civil Justice Council is currently considering pre-action protocols generally.[72] The Working Party believes that it would be helpful if, before a claim is brought/defended, litigants could be guided to consider the risks of litigation and the advantages of mediation (the need to heighten awareness of mediation/ADR was highlighted in the Civil Justice Council report on ADR).[73] A better explanation of what the process will involve from start to finish, understanding the pitfalls and potential difficulties with enforcement will assist potential litigants to make better informed choices.

108. In the experience of the Working Party, litigants in person rarely engage in adequate pre-action correspondence and discussions. The Working Party believes that HMCTS should have clearer signposting (including within OCMC) to the Practice Direction – Pre-action conduct and protocols. Paragraphs 6 (a), (b) and (c) of this PD set out quite clearly the expectation of the court in relation to a pre-action letter and information and response. There should be greater focus on how to guide and support potential claimants to write a pre-action letter and enable the defendant to respond. Once the response is received, the parties would be in a position to mediate and easily accessible guidance should set out the advantages of mediation at this stage i.e. pre-action (and how to access mediation). A well drafted pre-action letter and structured response will form the building blocks for a better articulated claim and defence if the claim does not settle and proceedings are issued

109. The adequacy of pre-action information is an issue which the Working Party believes should be considered in the second phase of this work.

Increased guidance as to the small claims process

110. The Working Party has concerns that the current system for the progression of small claims fails to provide adequate and easily understandable guidance[74] to assist litigants in person through the process and there is little management of expectation (e.g. as to timescales). It is unlikely that most litigants in person will be able to access any legal advice in relation to common types of small claim e.g. contract/consumer disputes. Litigants in person may struggle throughout the entire litigation process, not just at a hearing e.g. when having to

[71] There is a pre-action protocol for debt claims and a Practice Direction concerning pre-action conduct and protocols.

[72] There is a working group under the chairmanship of Dr Andrew Higgins; https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/working-parties/pre-action-protocols-working-group/.

[73] See e.g. paragraph 2.4; https://www.judiciary.uk/wp-content/uploads/2018/12/CJC-ADR-Report-FINAL-Dec-2018.pdf.

[74] In 2015, the OECD conducted a survey of adult skills, known as PIAAC (Programme for the International Assessment of Adult Competencies). This survey found that 16.4% (or 1 in 6) of adults in England, and 17.9% (or 1 in 5) adults in Northern Ireland, have literacy levels at or below Level 1, which is considered to be 'very poor literacy skills'. Many agencies work on the basis that the average reading age for adults in the UK is 11 years.

assess what are "relevant" documents. Despite warnings in the preamble to orders many fail to appreciate that their claim or defence may be struck out for failure to strictly comply with the requirements of a court order e.g. as to dates (and some members of the Working Party advocate the fewer court orders the better).[75] Despite the availability of a new online processes, OCMC, the Working Party is concerned that some litigants in person still cannot follow some on the instructions given and struggle with some of the language used. The Working Party recognises that drafting simple directions, that are easily understandable, with some concise guidance is challenging and time consuming. However many litigants in person will not read voluminous amounts of information and the right balance needs to be struck in terms of simplicity and length of guidance. Further any guidance needs to be updated regularly. Consideration should be given to whether links should be provided to guidance provided by third parties.[76] The Working Party believes that this is a further issue which should be addressed in the second report.

Forms

111. There has been no change to the small claims process where claims have been issued on paper or through Money Claims Online. The character limitation on the MCOL claim form, often with no detailed particulars being provided, means that the Defendant has limited information about the claim, as does the judge when it comes to allocation and directions.

112. The OCMC claim form and defence form have no character limitation, which has led to some litigants providing an unstructured, and sometimes incoherent content with the result that it is difficult for the defendant or the judge to identify the main issue in dispute. The timeline is often used to repeat what is written in the claim and is far too long. The Working Party is unsure as to the progress of the "case builder" aspect of the OCMC project, but believes that it could provide the necessary focus that is often missing.

Allocation/Directions

113. Different courts/judges use different forms of directions, with some judges approving directions provided by parties. Directions vary in 'user friendliness' for litigants in person. The Working Party believe that what is needed is one set of standard directions, for different types of claim, drafted in a simple language, that properly guide litigants and help enable them to prepare their case for hearing, for use in all courts.

Listing final hearings

114. The aim of the civil justice system is the most efficient use of judicial, administrative and courtrooms resources to achieve just and proportionate resolution of cases. Prior to the pandemic many larger and medium-sized courts sought to achieve maximum efficiency within the small claims track by setting directions through a final hearing and over listing days with final hearings and having judges (often Deputy District Judges) sitting back-to-back to give maximum flexibility. This approach has always been more problematic for smaller-sized court centres, given the risk of too many cases not settling with the consequential

[75] Which weights against the systematic use of preliminary hearings.
[76] See e.g. the "Advice now" website; https://www.advicenow.org.uk/tags/small-claims. The availability of assistance from Advice Now is referred to in the Hereford and Worcester standard directions in Annexe 3.

need to adjourn a case when the parties had attended and were ready for a hearing. However, given the boxwork pressures if a list went short judges were able to attend to other work and this was factored into local listing policies.

115. Whilst the intuition would suggest that remote hearings would increase flexibility for the listing of final hearings; this is often not the case. Remote hearings have tended to be given set times before individual judges and have proved difficult to "block list" for administrative reasons.

116. If a case has had an ENE/mediation/review preliminary hearing and not settled, then the chances of it requiring an effective final hearing before a judge are high and it can be listed accordingly. However, the resources cost is that two hearings are required (before different judges) in a significant number of cases when previously there would only have been one (or no hearing). In its report into ADR published in December 2018 the Civil Justice Council noted[77] the view held by some consultees:

> *"Judicial mediation and judicial neutral evaluations were the subject of a number of responses.*
>
> *Doubts were expressed as to whether this was a proper use of judicial time and a fear was expressed that the judge's power simply would not be available for those hearings.*
>
> *Presumably one difficulty is that a judge was conducting one of those hearings is disbarred from conducting the trial. That of itself requires a degree of resource and flexibility that may not be available in some courts."*

117. It was a recommendation of the report[78] that:

> *"Judicial resources should be made available for judicial neutral evaluations to be conducted in the small claims and County Court."*

118. The Working Party is of the view that given no extra judicial resources are likely to be available the question which needs to be addressed is whether a system of preliminary hearings in small claims is the best use of the current limited resources available in the civil courts.

[77] Paragraph 4.14.
[78] Recommendation 15.

REGIONAL INITIATIVES USING PRELIMINARY HEARINGS

119. In his final report published in July 2016 Lord Briggs stated:[79]

> *"There is a form of small claims conciliation (to use an umbrella term) carried out by District Judges in certain County Courts hearing centres in the Hampshire, Dorset and Wiltshire area, and also in Romford. It works in the following way.*
>
> *2.18. First, all cases in the small claims track are routinely called in for a conciliation and case management session. Attendance is compulsory, and parties not attending have their claims (or defences as the case may be) dismissed or struck out, with liberty to restore which is only very rarely exercised.*
>
> *2.19. The DJ conducting the list (which will include up to twelve cases in a morning's session) then invites each pair of parties to consider settlement, and provides assistance in the form of informal early neutral evaluation, in much the same way as is done at financial dispute resolution hearings in the Family Court.*
>
> *2.20. Those cases which do not settle there and then are given the benefit of case management directions designed to enable the parties to prepare for a final hearing much more effectively than is customary in the Small Claims Track.*
>
> *2.21. Statistics kept by the originator of the scheme in the Hampshire, Dorset, Wiltshire area (now HH Judge Dancey, but then a DJ) suggest that 25% of the entire small claims track list is disposed of due to non-attendance, 50% at the conciliation hearing, and a significant proportion of the remaining 25% settles before trial, due (anecdotally) to progress towards settlement achieved at the conciliation hearing.*
>
> *2.22. This scheme bears an interesting relationship with the Small Claims Mediation service. While it is operated by judges, at much greater expense per hour to the court service than that provided by the small claims mediators, it brings about settlement of a much higher proportion of the small claims issued and deals in half a day with more than double the number of cases dealt with by a typical small claims mediator in a whole day.*
>
> *2.23. I have found no convincing explanation why this form of judicial conciliation is being practised only in a small number of specific parts of England. It is possible that there are other parts where it is being practised, of which I remain unaware. The main argument against its more general use which has prevailed to date appears to be that cases which do not settle by means of this process therefore have to receive two doses of judicial attention, one at the conciliation hearing,*

[79] Paragraphs 2.17-2.23.

and the other (which has to be by a different judge) at the trial. This is, of course, correct as far as it goes, but it does not follow that the overall economic analysis ought to be regarded as adverse to the use of this form of judicial conciliation."

120. The systematic use of preliminary hearings identified in the Briggs report as in operation at Romford and Bow County Courts was stopped[80] and is about to stop in Dorset.

121. In Romford, and the larger court centre then at Bow, the practice was for every small claim to be listed for a preliminary hearing (conciliation and case management). After liaison with local managers the Designated Civil Judge for London stopped the use of such preliminary hearings as analysis of the data revealed that whilst there was a large percentage of cases which settled at the preliminary hearing the percentage was not significantly higher than the percentage which settled before a full hearing without a preliminary hearing having been listed; meaning that the practice did not create a significant overall benefit and, significantly, it resulted in the final hearings for small claims being delayed; so the overall economic analysis did not favour support the scheme continuing.

122. The practice of the preliminary hearings in all small claims for conciliation/ENE and case management has been used in Bournemouth for several years. The main difference with the Birmingham scheme is that the hearing is listed before the exchange of evidence. In 2021 after consultation/evaluation a decision was taken by the Designated Civil Judge not to continue with it as the data indicated that the savings in court time, if any, were relatively small and, given the proportionality principle and the resources needed to conduct the hearings, did not justify two hearings. Further there was consequential delay in listing of final hearing.

123. It is significant that the decision to stop the practice of preliminary hearings in these courts followed from an analysis of data which was clearly thought to reveal marginal gain in the face of significant knock on effects in terms of the need for additional judicial administrative and judicial resources and also significant consequential delay in listing final hearings.

124. Recently, given the difficulties faced as a result of the pandemic the practice of preliminary hearings in small claims has been introduced in Birmingham and also Hereford and Worcester.

Birmingham

125. The judiciary and staff at Birmingham Civil Justice Centre faced a serious issue with the listing of small claims as a result of the pandemic. 606 small claims listed for final hearings between 23 March 2020 and 1 July 2020 had to be adjourned and as at 14 July there were additionally 336 small claims awaiting listing having been allocated to track prior to and since lockdown: i.e. total of 942 outstanding cases to be heard (with more cases awaiting allocation and others being issued). As a result, urgent innovative steps were taken to address the backlog.

[80] Southend County Court also had a similar system which was also stopped by the then Presiding Judge for the region.

126. In July 2020 a pilot scheme was started with all small claims received (except for RTA claims where liability is in dispute) being listed for a preliminary hearing called a Dispute Resolution Hearing ("DRH"). There are no further referrals for mediation (it was felt that the small claims service was not operating effectively enough to further delay the progress of claims).

127. The DRH is a 30-minute telephone hearing (using BT MeetMe) listed as a preliminary hearing after evidence has been exchanged with the aim of voluntary mediation/early neutral evaluation or early disposal of the case (e.g. by strike out). There is a suite of standard orders.[81] As the evidence should be available the judge is able to assess compliance with the directions, if necessary, issue further directions and able to undertake an informed assessment of whether there is a real prospect of success. Only if the DRH does not resolve the case is it listed for a final hearing.

128. A DRH list will usually contain 6 or 7 hearings per day. The relevant documentation for the scheme is at Annexe 2.

129. The seven months of available data reveals impressive results. 47.5% of effective DRHs (i.e. not including claims which settled prior to the DRH) result in a disposal of the claim.[82]

130. The DRH also provides an opportunity to consider whether the final hearing could proceed by remote means. Of the 505 matters listed at DRH for a final hearing 20% were listed for a final hearing in person; 34.6% by video, 42.8% by telephone and 2.6% on paper.

131. A recent survey of the resident District Judges and Deputy District Judges at Birmingham produced suggestions for further improvements of the scheme including:

- Standard directions requiring parties to speak to each other before the DRH starts;
- ensure orders contain appropriate explanations and warnings if DRHs have to be adjourned to another day;
- limit those who can attend to one representative and the party on each side - insufficient time to join more.

132. The detailed data is as follows:

[81] All local fee-paid judiciary were invited to sit on the scheme and an expression of interest drafted explaining the pilot in outline. Detailed judicial guidance was drafted to assist. Notices are sent out in advance to the parties explaining the purpose of the DRH.

[82] In a few cases the matter was referred for a further DRH e.g. the parties need to exchange further information and the parties remained willing to negotiate.

BCJC Small Claims Track Dispute Resolution Hearings Pilot – July 2020 to February 2021

7 Month Review - Data available as at 10 February 2021 – based on 232 responses from (Deputy) District Judges dealing with DRH Lists (1146 listed cases)

Date/ Week Commencing	No of DRHs listed for which data is available from feedback survey	Settled before hearing (notified to DJ on day of hearing)	Total disposed of/settled at the DRH	Settled at DRH	Listed on PAPER	Listed by BT Meet Me	Listed by VIDEO	Listed in PERSON	Total listed for final hearings
2/7/2020	16	0	11	1	0			4	5
7/7/2020	13	5	4	3	1			1	4
9/7/2020	12	1	5	2	0			1	6
14/07/2020	12	1	5	2	0			1	5
16/7/2020	10	2	3	2	0			3	4
21/7/2020	21	4	3	1	0			5	14
23/7/2020	14	2	8	2	0			1	5
27/7/2020	39	4	11	4	1			9	24
3/8/2020	89	14	30	6	2			14	43
10/8/2020	68	9	36	10	1			9	33
17/8/2020	59	4	27	11	2			9	24
24/8/2020	12	0	4	1	0			2	8
Total Tel and Video Hearings to 31.8.2020						64	64		
1/9/2020	58	7	28	11	0	11	10	3	24
7/9/2020	49	6	16	4	0	9	9	6	24
14/9/2020	56	5	20	8	0	11	9	5	25
21/9/2020	49	2	22	3	1	10	7	4	22
28/9/2020	25	4	12	5	2	5	4	0	11
5/10/2020	47	6	17	7	1	7	10	3	20
12/10/2020	49	2	31	8	0	9	5	1	15
19/10/2020	27	2	10	2	0	7	3	3	13
26/10/2020	44	4	22	11	1	8	5	0	13
2/11/2020	55	3	30	6	0	16	1	4	21
9/11/2020	31	0	25	4	0	3	1	4	8
16/11/2020	47	11	13	6	1	10	9	0	19
23/11/2020	58	9	19	3	0	8	12	4	24
30/11/2020	49	6	17	5	0	10	10	2	22
7/12/2020	25	4	9	6	0	8	5	2	15
14/12/2020	26	5	12	8	0	2	6	0	8
4/1/2021	22	2	5	1	0	11	2	0	13

11/1/2021	35	10	14	3	0	2	3	0	5
18/1/2021	16	4	6	3	0	3	0	1	4
1/2/2021	13	1	9	5	0	2	0	0	2
TOTAL: **Effective:**	**1146** **1007**	**139** **12.1%**	**478** **47.5%**	**150** **14.9%**	**13** **1.3%**	**216** **21.4%**	**175** **17.3%**	**101** **10%**	**505** **50.1%**
As % of Final Hearings listed					**2.6%**	**42.8%**	**34.6%**	**20%**	

133. Whilst the DRH procedure has successfully avoided the need for a final hearing in nearly 50% of cases,[83] for those that do not settle a further hearing is required and there is currently a backlog of attended hearings. As can be seen at paragraph 40 above there is inevitably a degree of trade off in terms of timeliness of final hearings as resources are required for the DRHs which would otherwise be available for final hearings. Timeliness of final hearings is one of the limited number of factors in the progression of civil cases upon which data is compiled and his appears to have been a significant factor in the decision to stop the use of preliminary hearings is all small claims in Romford and Bournemouth i.e. the effect of the use of preliminary hearings was to increase delay for all final hearings.

134. When attended claims are listed i.e. the preliminary hearing does not achieve resolution, a back-to-back system is not utilised as it is expected (given the high percentage which have had a DRH) that the settlement rate will be relatively low (as compared with lists when no DRH has taken place).

Hereford & Worcester

135. Attended DRH hearings have also been introduced at these linked centres.[84] As with Birmingham the data appears to support some success in resolution of cases.

136. All small claims are triaged on paper after all evidence has been filed and served (with an order made at the allocation stage). Assuming no default, the practice is that:

a) RTAs (both liability only and credit hire), are listed to final hearing by Teams (no DRH);
b) PPIs are listed into a 'block list' of up to 10 a day (no DRH);
c) for other cases the default order is listing for a DRH by telephone (6 DRHs are blocklisted in a day and conducted by telephone hearing).

The DRH involves early neutral evaluation and encouragement to settle. If no settlement is achieved the claim will be listed for a final hearing (not within a block list). The DRHs are conducted remotely by telephone which enables Hereford DRHs to be heard in Worcester to overcome the difficulty caused by the single judge in Hereford not being able to hear the DRH and any final hearing.

[83] C.f. some hearings stuck out at a DRH may be re-instated e.g. failure to attend for good reason.
[84] There is a single administration based at Worcester Combined Court Centre (and three resident District Judges).

137. The scheme guidance document is at Annexe 3.

138. The data shows that for the year April 2019-March 2020, in the region of 60% of small claims went to final hearing. However, of the 104 DRHs since August 2020, 47 (45%) have proceeded to final hearing.

139. Significantly from August to October 2020, of 60 DRHs 33 (55%) went to final hearing whilst from November to February 2021 (no hearing fee), of 45 DRHs, only 14 (31%) went to final hearing. This evidences the belief of judges involved in the regular use of DRHs that requiring the hearing fee entrenches positions and removes an important settlement lever.

Analysis

140. The generic advantages and disadvantages of the listing of DRHs in small claims (i.e. of expanding the Birmingham and Hereford schemes) are as follows:

Advantages

a) the saving of court time where claims or defences are summarily struck out after parties have been directed to provide all relevant documents and evidence;[85]
b) in cases where settlement/resolution is achieved there is a considerable saving in court time on final hearings;
c) where a final hearing is required, the parties are clear about the issues in dispute and the evidence they must produce at the final hearing with the result that the final hearing is far more likely to be effective.

Disadvantages

d) Significant judicial and staff resources are required to list additional hearings (as both the DRH and final hearing must be listed before a judge);
e) for claims which do not settle there are two hearings before a judge as opposed to one with consequential impact on judicial and administrative resources and requiring litigants to consider and comply with an additional order in what for many is already a stressful and time consuming process);
f) it is not proportionate to have two hearings in modest value claims. Significantly ENE/mediation hearings are not routinely listed in either fast track or multi-track cases and if judicial and administrative resources are to be used in a focused fashion given the principle of proportionality they should be used for larger value/more complex cases;
g) increased delay in the listing of final hearings (see paragraph 39 above);[86]
h) the need for a different judge to conduct the final hearing.[87]

[85] The Working Party had concerns about the application of a strike out sanction in small claims given that many litigants act without legal advice and may struggle to understand the need for strict compliance with directions before a hearing. Further, strike out of the Court's own motion/in the absence of a party may lead to an application to re-instate which will require judicial and administrative resources.
[86] The Working Party noted that the current figure for Birmingham is more than six months greater than in other regions.
[87] Courts in an area can form a DRH group whereby one court centre deals with the telephone DRHs in respect of matters which will have a final hearing at a different court.

141. The scheme used at Birmingham has now progressed from a pilot to a permanent practice. It has the strong support of the resident District Judges who are of the collective view that it has produced a very impressive reduction in the number of cases requiring a final hearing and eased the build-up of cases caused by the pandemic.

142. However to fully evaluate the effect of the practice on judicial and staff resources (what Lord Briggs referred to as the "overall economic analysis") it would be necessary to consider the judicial and staff hours required if all hearings were given a single final hearing at the directions stage (given that a significant percentage of claims will settle before a final hearing in any event; this assumption being built into block listing) as opposed to the resources required by the listing of a DRH, with a much lower percentage of cases requiring a final hearing, but a significant percentage of cases having two hearings[88] (with different judges having taken time to prepare the case on each occasion). Such an evaluation would also need to take into account the effect of the pandemic (which appears to have increased the pre-trial settlement/resolution rate) and increased delay for final hearings (although measurable in terms of added time it will not be possible to cost delay to the parties in pure financial terms). The Working Party appreciates that undertaking such an analysis will not be straightforward, but believes it is necessary to have a detailed data driven evaluation of the impact of the practice before any recommendation could be made that the scheme be expanded to all courts. The Working Party is mindful that data was said to support the halting of the use of DRHs in other court centres in the past and that given that in the region of 75% of all civil trials are small claims hearings great care must be taken not to introduce counter-productive measures in some or all court centres. If an retrospective analysis (in particular the years to the end of March 2020 and March 2021 and six month future analysis (which will capture the start of the effects of the changes in relation to personal injury cases) were to be undertaken as a matter of urgency the results could be considered during phase two of this work and a conclusion reached on the benefits and drawbacks of DRHs. The Working Party are happy to liaise in relation to the parameters of the analysis and would suggest that the design of the analysis could be set out within six weeks of the publishing of this report.

143. The Working Party is also conscious of the potential impact of the recent improvements to the small claims mediation service and the recommendation that there be adequate resourcing of the small claims mediation service so that no claim reaches a court without an appointment being offered to parties wiling to mediate. The Working Party recognises that evaluation and the exploration of whether settlement is possible by a judge with all evidence available is a different exercise to that provided by the small claims mediation service. However, it seems reasonable to assume that a significant percentage of claims to date which have had a DRH but no prior opportunity of a small claims mediation appointment would have settled at the mediation had such an appointment been offered i.e. the case would not have reached the court with a consequential saving of administrative resources. If appointments were offered in all cases and the courts only received cases where mediation had failed or been refused the success rate of the DRH scheme is likely to reduce significantly as the "low hanging fruit" in terms of achieving settlement has been removed. Given that the cost of a mediator and support staff is very significantly less than the cost of a judge and the necessary support staff the Working Party believes that the

[88] Potentially three if a claim is struck out and then re-instated.

success of the Birmingham DRH pilot further evidences the need for a fully resourced small claims mediation service.

144. A further recommendation of the Working Party is that third party local mediation organisations should be encouraged to provide a low-cost mediation option for parties after evidence has been exchanged. In appropriate cases small claims directions could include a period for such mediations to take place and would reduce the use of judicial resources[89] and allow for fully trained mediators (which many judges are not) to try and achieve resolution.

145. The Working Party also believes that two of the advantages of a DRH:

a) the saving of court time where claims or defences are summarily struck out after parties have been directed to provide all relevant documents and evidence but have failed to do so; and
b) the ability to assess whether it is possible to conduct a remote as opposed to an attended hearing

could be addressed by ensuring adequate information as to the viability of a remote hearing is provided by the parties before directions are made and also undertaking a triage/pre-hearing evaluation of all small claims before final hearings, principally to check compliance with directions.

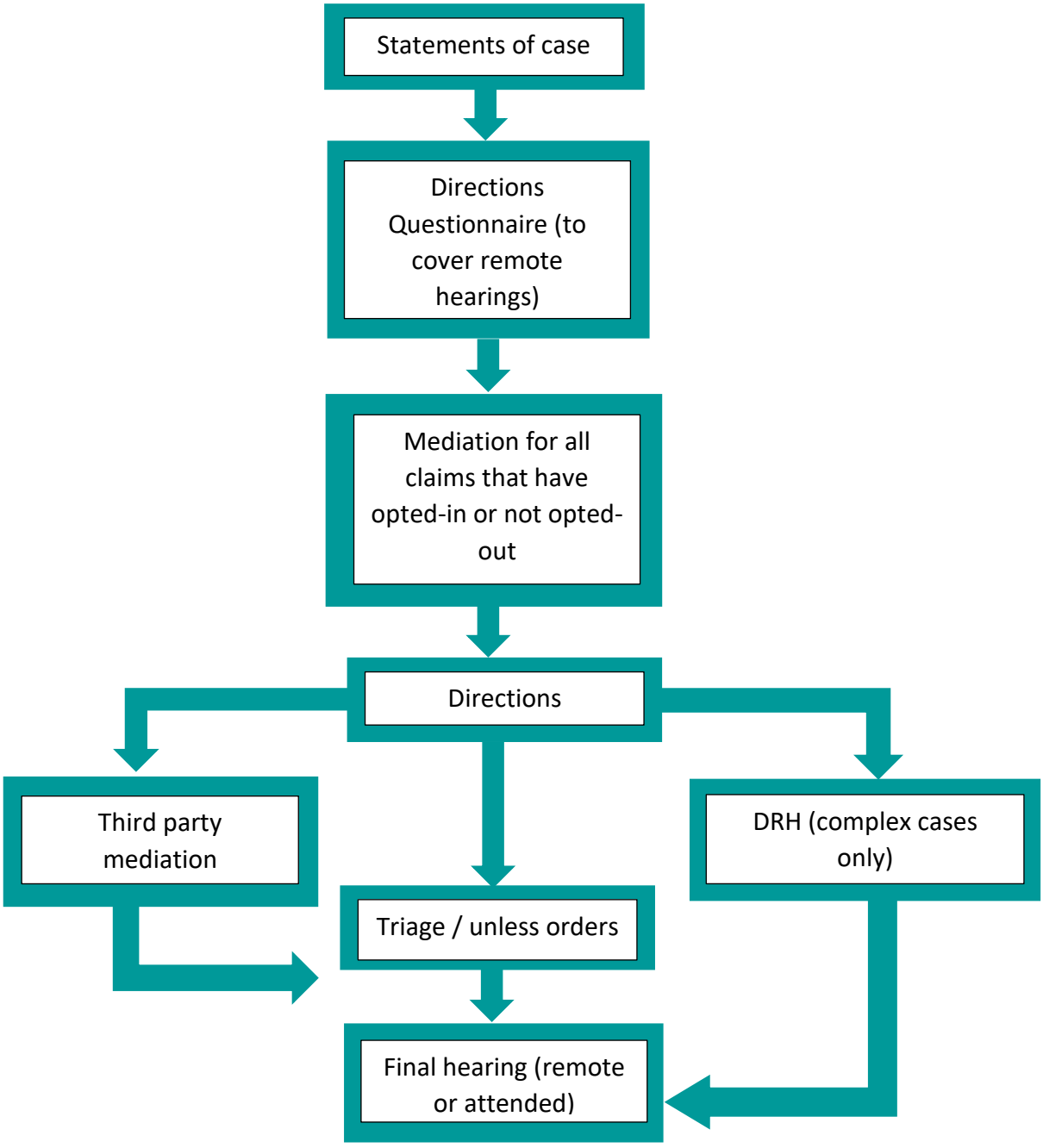
146. It is the view of the Working Party that a universal approach across all hearing centres of the County Court of listing all small claims for a DRH cannot, on the limited data/analysis presently available, be viewed as a necessary (or desirable) step for the long term improvement or advancement of the just and proportionate resolution of small claims. The scheme in Birmingham has been successful and rates of resolution of cases at the DRH is impressive. However, the increased use of mediation, revised questionnaires and triage should deliver some of the benefits of DRH hearings and there are consequential increased demands/costs in terms of judicial and other resources and delay in listing final hearings. The overall economic benefit has not been, and needs to be, calculated.

147. In the interim the Working Party believes that it is clear that DRHs should be used in appropriate cases and the Birmingham data has evidenced that they can be a very effective tool in the resolution of claims. The current restrictions on the use of preliminary hearings set out in CPR 27.6 (1) should be relaxed to allow their more flexible use.

148. At present for court centres not using the practice the aim should be that they are reserved for more complex small claims where proportionality justifies what may well be an additional hearing and only extended to all claims if the overall economic analysis supports the step.

149. Subject to consideration of wider issues in the second phase of this work, the Working Party recommends that HMCTS, court centres and the judiciary give immediate consideration to implementing practices in line with the road map on the following page.

[89] Many court buildings are open until 18:00 or 18:30 and conference rooms could be made available for use by mediators for two hour slots each evening.


Statements of case
Directions Questionnaire (to cover remote hearings)
Mediation for all claims that have opted-in or not opted-out
Directions
Third party mediation
Triage / unless orders
DRH (complex cases only)
Final hearing (remote or attended)

PAPER DETERMINATIONS

150. The issue of whether the court should have the ability to determine modest/non-complex small claims by way of written judgment has been debated for some time without detailed analysis. Some judges believe that the ability to provide a paper determination consisting of relatively brief written reasons,[90] usually by a Deputy District Judge and, possibly with a limited right of appeal[91] would ensure adherence to the principle of proportionality and produce obvious benefits such as:
    a) reduced call on judicial and staff resources;
    b) faster determination of small claims;
    c) a reduction in need for hearing rooms/courtrooms.

151. Currently the CPR provides "***27.10*** *The court may, if all parties agree, deal with the claim without a hearing."*

152. However, there is a marked reluctance amongst most litigants to agree to a written determination and many judges do not favour such a development as:

    a) there is no obvious time benefit (given the time needed to produce a judgment; which may be longer than the time taken for an attended hearing);
    b) many litigants are happier to present orally rather than on paper;
    c) it is often far more likely to achieve a just result if there is an oral hearing rather than requiring litigants to produce detailed and comprehensive written cases (with no right of reply), removing the ability to ask questions or explain the law.

153. It is possible that each of these issues can be addressed:
    a) Litigants could be expressly told that a written judgment will be produced much faster than waiting for a hearing. Also, there could be limited fee rebate/reduction.
    b) A brief guide and template could be produced for litigants who are proceeding by way of determination on the papers (with a "Ladd-v-Marshall" warning that if a document is not submitted then it cannot be considered by the judge or on any appeal).
    c) Templates for judgment. This would assist judges to complete the judgment quickly and in summary form without fear of criticism.

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[90] The need for a simplified procedure for "small claims" was recognised by the European Parliament and led to Regulation (EC) No 861/2007 of 11 July 2007 which established a European small claims procedure for claims. The procedure established by this Regulation is intended to improve access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs. Small claims are defined as cases concerning sums under EUR 2000, excluding interest, expenses and disbursements. Interestingly, under the procedure a court in a member state has the power, once documentation has been filed, to ask for further information or to take evidence or to summon the parties; but there is no obligation to hold an oral hearing if it is not necessary for the fair conduct of proceedings. So as matters stand at present small claims of £1,500 under the CPR must have an oral hearing unless both parties agree; however, if it were a cross border dispute and the alternative procedure adopted a hearing would take place only if necessary. Also, other countries such as Holland, Belgium, Germany and Austria have a far more limited and streamlined regime is available for the determination of smaller value cases (varying from EUR 600 to 5,000)

[91] Which used to be the case under the civil procedure rules for an arbitration in a small claim under £1,000.

154. However, the Working Party considered that this issue required wider consultation and analysis and recommends that it is within the scope of the second phase of this work.

RECOMMENDATIONS

155. The Working Party makes the following recommendations.

156. HMCTS should have a target that no case in which the parties have opted into mediation should reach a court without a mediation appointment having been offered. If this standard is not achieved in the near future, then further investment in the service should be considered.

157. The parties should be required to provide information within the questionnaire:
    a) About the wish and ability to participate in remote hearings (with relevant contact details)[92] and vulnerability[93] within the directions questionnaire (with a risk claim/defence struck out if the information is not provided).
    b) If they consent to an ENE/settlement hearing in advance of the final hearing.

158. There should be a review of the third-party mediation pilots and consultation by MOJ and HMCTS with mediation providers with the aim of setting up the facility of private third-party mediation for all small claims. Consideration should be given to a further pilot at a court with referral across all claims tracks.

159. The civil procedure rules should be amended to be less prescriptive as to when a preliminary hearing can be held (as CPR 27.6 is unduly restrictive).

160. HMCTS should, as a matter of urgency, plan[94] and undertake a detailed data analysis[95] of the benefits of the practice of preliminary hearings in operation at Birmingham and Hereford as compared to practices at selected other court centres so that their effectiveness can be fully evaluated.

161. Court centres should give consideration to implementing the practice of:
    a) Consideration of the listing of preliminary hearings at the directions stage in complex small claims where it is proportionate to do so e.g. some claims which require expert evidence (such as building disputes) or other set types of claim where a clear benefit has been identified;
    b) pre-hearing triage in all claims before a final hearing with a checklist filled out for/by the judge, to ensure that directions have been complied with and the hearing remains effective and the time estimate realistic (this step being subject

[92] With clear reference to the fact that these details will be used for communication and remote hearings and also to the need to update the court if the details change.
[93] As recommended in the Civil Justice Council report on Vulnerable Parties and Witnesses; https://www.judiciary.uk/wp-content/uploads/2020/02/VulnerableWitnessesandPartiesFINALFeb2020-1-1.pdf.
[94] The Working Party is happy to liaise in relation to the parameters of the analysis and suggests that its design should be finalised within six weeks of the publishing of the report. A six-month prospective data analysis could then be available for consideration for phase two of the report.
[95] The Working Party also recommends that data be complied for different values in the bracket £1,001 to £10,000; see generally paragraph 37 above.

to the provision of adequate administrative capability for the task at the court centre);

c) "Blitz" lists in the event of a build-up/backlog of hearings.

162. The Working Party also recommends detailed consideration of the issues set out below by an expanded Working Party and after consultation with the judiciary, litigant in person support groups, court users and third-party organisations.

Issues for further consideration:

a) Proportionality and the small claims procedure (including whether there should be different rules for claims under a modest financial limit);
b) Pre-issue and post-issue mediation;
c) Pre-issue information;
d) Better guidance for litigants and directions in simple language;
e) Harmonisation of directions;
f) The impact of the changes to RTA personal injury claims;
g) Written/template judgments;
h) Guidance as to when the remote hearings may be appropriate in small claims.

163. The Working Party thanks the Civil Justice Council Secretariat for their assistance with the preparation of this report.

TABLE OF ABBREVIATIONS AND ACRONYMS

ADR	Alternative dispute resolution
CCMCC	County Court Money Claims Centre
CJ	Circuit Judge
CJC	Civil Justice Council
CPR	Civil procedure rules
CVP	Cloud Virtual platform
DCJ	Designated Civil Judge
DDJ	Deputy District Judge
DH	Directions hearing
DJ	District Judge
DRH	Dispute resolution hearing
EL	Employers' liability
ENE	Early neutral evaluation
FH	First hearing
HHJ	His/Her Honour Judge
HMCTS	Her Majesty's Courts and Tribunals Service
J	Mr/Mrs Justice
MCOL	Money Claims Online
MOJ	Ministry of Justice
OCMC	Online civil money claims
PD	Practice Direction

PPI	Payment protection insurance
PL	Public liability
RTA	Road traffic accident
SCMS	Small claims mediation service
SCT	Small claims track
VH	Video hearing

Annexe 1 - The Working Party

His Honour Judge Cotter QC (Chair)

District Judge Avent

District Judge Gibson

District Judge James

District Judge Middleton

District Judge Nightingale

District Judge Chloë Phillips

Joanne Collis; Civil Jurisdictional Manager, HMCTS

Assistance was also provided by

His Honour Judge Gore QC

His Honour Judge Wood QC

His Honour Judge Bird

William Wood QC

And,

Leigh Shelmerdine, Secretariat to the Civil Justice Council

Amy Shaw, Secretariat to the Civil Justice Council

Graham Hutchens, Secretariat to the Civil Justice Council

Annexe 2 - Documentation from the Birmingham scheme

- Guidance to Judges
- Notice of Dispute Resolution Hearing
- Tick Box form

UPDATED GUIDANCE NOTE TO (DEPUTY) DISTRICT JUDGES DEALING WITH THE SMALL CLAIMS TRACK DISPUTE RESOLUTION HEARING PILOT SCHEME.

This note is intended to provide some further background information and assistance to (Deputy) District Judges dealing with Dispute Resolution Hearing lists at Birmingham Civil Justice Centre and should be read in conjunction with the original notice about the scheme which is attached and the order sent to the parties in advance of the hearing which will be on the file.

Background Context

1. Due to the current public health emergency it has been necessary to adjourn a large number of small claims track final hearings creating a significant backlog of claims waiting for a hearing date. It is also unclear when we will be able to return to business as usual and operate block lists for in person small claims hearings.

2. Significant delays are therefore continuing to build up while social distancing measures remain in place in cases that were intended to be heard swiftly: the expectation is that 70% of small claims matters are resolved within 30 weeks. Whilst these cases are not of very high monetary value, they are of great importance to the parties and delivering justice within a reasonable period in these cases is an essential part of the civil justice system. For example, the small trader chasing debts which will enable him or her to remain trading and not have to sell the tools of their trade or work van.

3. Experience of dealing with small claims matters has also shown that it is not unusual for one, or sometimes even both parties, not to attend the final hearing of a small claims matter. It is also not unusual for the parties not to have properly complied with the court's directions orders, meaning that the final hearing cannot be effective in a significant number of cases. With the reduced number of court rooms available because of social distancing measures we can ill-afford ineffective face to face hearings.

4. The Covid-19 pandemic also means the court mediation service is stretched, yet research shows that many small claim cases are suitable for mediation and resolution without a full hearing.

5. In response to these issues Birmingham CJC is piloting a Dispute Resolution Hearing Scheme. Final Hearings listed from 2 July 2020 have been converted into what we are calling a Dispute Resolution Hearing (DRH) to enable the parties to have input from a judge in a short telephone hearing since it is not currently possible to hold a face to face final hearing. Final hearings that were adjourned because of the covid-19 pandemic will also be relisted as DRH

hearings. It combines the full powers of CPR27.6 with voluntary mediation/early neutral evaluation and it is hoped that in many cases with firm but fair case management the claim will be satisfactorily concluded or resolved at the DHR.

6. It is an exciting project which it is hoped will bring long-term benefits to the court and to litigants using the court - not only litigants using the small claims track, but all court users may benefit from the more efficient use of court time in this project and any wider lessons learned as a result of the feedback gathered from this pilot scheme. It is also being watched with keen interest by other courts around the circuit and beyond.

Managing Your List

7. We are currently block listing 4 cases in the morning and 3 in the afternoon for each judge with 2-4 judges participating each day, on the basis that the DRH will last around 30 minutes, +15 minutes buffer time, but the judge will have flexibility on timings as the parties are given a window of either 10 AM to 1 PM or 2 PM to 4:30 PM in which to expect the telephone call from the court.

8. As with a block list, it is a collective responsibility to finish the list. Some cases will be much quicker, or slower, than others and you should liaise with your colleagues during the day to ensure the work is spread fairly and evenly. If you finish your morning or afternoon list early, please ensure you check with colleagues to see if they need help before leaving or starting other work.

9. It is suggested that on arrival at court the judge should read the files carefully and review them to establish which matters are more likely to be resolved swiftly (i.e. where one party has not engaged at all, or an obvious strike out based on the Particulars of Claim or Defence) and it may be sensible to deal with those matters first, so that you then have the opportunity to spend more time on matters which may require your mediation skills and more time drafting Orders.

10. Refer to CPR 27.6 and CPR 3 in relation to the case management powers available to you.

Contacting the Parties

11. The parties have been ordered to provide the court with their contact numbers and been told to be available to be contacted as set out in the Notice from the court. The telephone hearings are being conducted through BTMeet Me conferencing service. If you have not used this before a member of staff will show you how to do it. It is not complicated, and you will be given a step by step guide to use as an aide memoire. It is important to remember to record the proceedings. You must also read out or summarise the script for the hearing you have been provided with so that the parties understand that the telephone conference constitutes a formal hearing.

12. If a party has not provided a contact number as ordered, please check the file to see whether you can locate a contact number for them from the documentation on file.

13. If a party does not answer the call when you first try to contact them, in cases where a party has provided a contact number as ordered, you must attempt to call them at least one more time. If you are unable to contact a party, this must be recorded in the recital to your Order. Whether a contact number has been provided by the party, the number of attempts to contact a party and the times of those calls should be stated in your Order, as this will assist if there is an appeal by that party.

14. It will be for you to decide whether you try to contact a party more than twice and how long an interval you wait: whether you ask the other side to wait on the conference call for perhaps 5-10 minutes, before trying again or if you decide to put the matter back in your list for later on within either the morning or the afternoon slot that the parties have been given. Relevant factors will include the level of engagement by the litigant in their case hitherto, any communication issues or vulnerabilities, the merits of the case and all the usual factors we take into account in exercising our judgment and judicial discretion.

15. You must make an accurate note on the file of the telephone numbers you have called in case of later set aside or reinstate applications based on not receiving the phone call.

Conducting the hearing

16. After the introductions and explanation of the purpose of the hearing, you may want to deal with any preliminary procedural formalities, such as any amendment applications or correcting the name of the defendant to reflect its proper title, before offering mediation/ENE as once you embark on mediation you cannot then go on to make rulings on contested matters.

Helping parties to settle

17. Unless there are clear strike out grounds (see paragraphs 22 & 23 below), at the outset of the hearing, you should establish whether the parties are willing for you to try to help them reach an agreement. Both sides must agree after you have explained it is an entirely voluntary opportunity that the court is providing to them. It is worth emphasising to the parties the benefits of reaching a conclusion that day, in terms of them saving time, costs and stress, and that it gives them both the benefit of certainty as to the outcome and control of the litigation. In the order listing the case for a DRH the parties have been told this will be offered, so they will have hopefully begun thinking along these lines.

18. We all have our own mediation/early neutral evaluation styles, but one method you might want to use is firstly to identify the key issues with them and offer to give your view on, for example, difficulties they might face with their position or the strength of the evidence for or against a party and you could conduct an early neutral evaluation with their consent. One or other party might then make an offer which may be the start of a negotiation between them, mediated by you, conducted there and then. In some cases, it may be better to ask

them to identify what they see as the main issues first. You will develop a feel for the best approach in any particular case. You should encourage the parties to be realistic.

19. If the mediation/ENE process is promising, but parties need a little time to consider their position further, you may consider it appropriate to suggest that you agree to call them back later in the day for a short follow up, specifying the time period that both parties must be available for the call, if you have leeway to do this in your list. It would be on the basis that if a settlement cannot be agreed at an early stage during that second telephone call the matter will be listed for a final hearing. Consider making it a precondition that the offer must remain on the table until after the second phone call, to avoid the party reducing or withdrawing the offer in the intervening period.

20. If a settlement is reached it is important that you record the terms in writing and read the terms to the parties to obtain confirmation of their agreement to the wording. This can be in the form of a brief Tomlin Order. The aim is to have finality by the end of the hearing.

21. Even if a settlement has not been reached, the issues may have narrowed and crystallised during the discussion. It is important these are recorded in your order as it will save time at the Final Hearing and also assist in deciding what type of Final Hearing will be necessary. The parties should be told to let the court know as soon as possible if they subsequently agree a settlement so the Final Hearing can be vacated.

Strike out for no real prospect of success and/or no reasonable grounds for bringing or defending the claim (CPR27.6(1)(b) and (c)).

22. The strike out powers in Preliminary Hearings in CPR 27.6 are available at the DRH, but you will not be able to exercise them if you have first conducted ENE/mediation. In clear cut cases where strike out is inevitable you may therefore want to consider strike out before offering mediation.

23. If following the representations of the parties you change your initial view and do not strike out the claim or defence, you may then offer to help the parties to settle, as per paragraphs 17-21 above.

Strike out Considerations – general

24. As with any other case, where you are in effect considering a relief from sanctions application for non-compliance with an order, the Denton principles apply. Consider the seriousness of the breach, the reason(s) for it and any other relevant circumstances in deciding whether to exercise your powers. For litigants in person bear in mind the requirements of CPR 3.1A to have regard to the fact that the party is unrepresented but also that all parties are expected to comply with the rules, whether represented or not (Barton v Wright Hassall ([2018] UKSC 12).

Strike out Considerations – Special Consideration required during early stage of this Pilot

25. If considering a strike out for breach of the court's order for directions, please bear in mind the following. The standard wording for Birmingham County Court's small claims track directions Order requires parties to have delivered to the court and to each other the documents on which they intend to rely "no later than 14 days before the hearing." It was drafted in anticipation of there being only one hearing, the final hearing. If you are contemplating strike out for non-compliance with directions, consider first clarifying that the party understood that they were required to comply with the direction before this (i.e. the DRH) hearing. If they had genuinely understood the order as meaning compliance was required only more than 14 days before a Final Hearing and the claim or defence and the claim or defence is struck out for non-compliance, there may be a valid appeal point.

26. The updated Notices to the parties will now make it clear that reference to the hearing means the Dispute Resolution Hearing, and parties should have complied with all directions relating to exchange of documents prior to the DRH. You should, therefore check the wording in the Order made in the case before you if you are considering a strike out on this basis or obtain confirmation that the party understood the reference in the original order to apply to any hearing, not just a final hearing.

Listing for a Final Hearing

27. If the matter is not concluded during the hearing, please list the matter for a final hearing. A tick box form has been drafted so that you can include in your Order the following standard directions:
    a. A recital noting any issues which no longer need to be dealt with at the final hearing, or a short list of the issues which will be dealt with, if the issues have been narrowed during the DRH.
    b. If you have conducted a mediation during the hearing the recitals should record the fact and that the Final Hearing must not be before you.
    c. If necessary, a direction that any further specified documentary or witness statement evidence must be sent to the other parties and the court no later than 14 days before the final hearing.
    d. A time estimate for the final hearing, giving reading time for the judge and include estimated time for judgement, specifying whether the hearing is to be:
        (a) on paper – list for first open date after 21 days.
        (b) by telephone - unlikely to be suitable where cross examination of witnesses is required – to be listed on the first open date after 21 days.
        (c) by video – Skype for business or Microsoft teams, or CVP – 1st open date after 21 days.
        (d) in person – 1st open date after 6 weeks (42 days), although warn parties that it could be longer due to the limited availability of suitable court rooms in current circumstances because of social distancing. You must find out the number of people who will be attending the hearing so that an appropriately sized hearing room can be allocated. Also, if there are a number of witnesses, consider if all witnesses need to attend court or if

there could be a hybrid hearing with some witnesses giving evidence by video.

e. If the Final Hearing is to be conducted by telephone or remotely, it is essential that you obtain the parties' email and phone number contact details and record them.

Orders in general

28. In addition to recording unsuccessful attempts to contact a party, it is important that you record any key findings as recitals to your Order, particularly if a party has not been in attendance. For example, if you are striking out a case, to record:
Upon the court finding that the statement of case discloses no reasonable grounds for bringing or defending the claim… .or, Upon the court finding that the claimant/defendant has failed to comply with the court order dated…

29. To assist the court staff with the efficient production of orders to be sent out to the parties, please complete the tick box form by hand and if there are also lengthy tailor made orders please email the wording of the bespoke orders to: smallclaims.birmingham.countycourt@justice.gov.uk In the subject line of the email, please put "SCT DRH Pilot Order - claim number ……". The staff will then be able to automatically generate the relevant heading for the order.

Feedback on the Pilot

30. We hope you enjoy taking part in this pilot. It is a work in progress so we will make any changes and adjustments based on the feedback we receive from those dealing with these hearings. We look forward to receiving your constructive comments via the survey - https://forms.office.com/Pages/ResponsePage.aspx?id=V0U-chcv7UOecfG-slPlRg6Pr-gywr5MkkZEy6_o4DFUOVo2MFFJNE82RDVEU1NIRjhRT1dXQzRYUC4u

31. District Judge Chloë Phillips is leading the scheme from the district bench and we are both on hand to answer any questions and problems you have. Please don't hesitate to approach either of us if there are any issues on the day.

32. Good luck and we hope you find it both interesting and rewarding work that is performing an invaluable service to the parties.

HHJ Mary Stacey, Acting Designated Civil Judge for Birmingham
District Judge Chloë Phillips

Small Claims Track - Notice of Dispute Resolution Hearing - *For matters on new allocation – standard directions [19.2.2021]*

UPON considering the Statements of Case and Directions Questionnaires filed by the parties

IT IS ORDERED that:

This Claim is allocated to the Small Claims Track and the parties are referred to Part 27 of the Civil Procedure Rules and the Practice Direction to that Part for guidance.

The parties are always encouraged to try to settle the case by negotiation. The parties are encouraged to contact each other with a view to trying to settle the case or narrow the issues. The court must be informed immediately if the case is settled.

TAKE NOTICE that in light of the current public health emergency and having regard to the guidance given by Public Health England and Her Majesty's Government, and in order to ensure that small claims track matters are dealt with without undue delay, but justly, efficiently and proportionately:

Dispute Resolution Hearing

This claim is listed for a Dispute Resolution Hearing by telephone before a District Judge at Birmingham County Court on [*date*] in a [3 hour window from 10am-1pm] or a [2 hour window from 2pm – 4.00pm] with a time estimate of 30 minutes.

You must be available to receive the phone call from the court during this period in a place where there is minimal background noise and you have access to the paperwork so that you can discuss your case with the Judge and the other side.

The person attending the hearing must have full authority to settle the case.

The Dispute Resolution Hearing will take place **by telephone** and the court will contact the parties using BT Meet Me. If you use a call barring/screening service you may need to remove this for the day of the hearing to ensure the court is able to contact you. Please check this with your provider, if necessary, in advance of the hearing date.

Preparation for the Hearing

The Judge orders that the parties prepare for the hearing as follows:

1) Each party **must** deliver **to every other party and to the court no later than 14 days before the hearing** copies of**:**

- all documents they rely on to prove their claim or defence (These should include the letter making the claim, any reply and any documents which prove the quantum of the claim). If photographs are to be relied on, any copies should be in colour not black and white; **and**
- the party's signed witness statement and the signed witness statement of any other witness(es) relied on in support of the claim or defence

2) Witness statements must:

a) Start with the name of the case and the claim number;
b) State the full name and address of the witness;
c) Set out the witness's evidence clearly in numbered paragraphs on numbered pages;
d) End with this paragraph: '*I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against*

anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."; and

e) be signed by the witness and dated.

3) The **copies must be delivered as follows**:

- either hard copies of the documents to be delivered by post, by DX or personally, **or** electronic copies by a single email with the documents attached as a pdf bundle.
- You must include in the heading of your email or letter and on the front of the bundle the case name, case number and hearing date. If you are sending hard copy documents to the court, please write the **hearing date** clearly on the envelope/outer packaging.
- Documents may be sent to court by email to: hearings.birmingham.countycourt@justice.gov.uk as a single pdf paginated bundle.
- To avoid duplication, documents sent by email must not be sent in hard copy unless specifically requested.

4) No party may rely at the final hearing on any report from an expert unless express permission has been granted by the court beforehand. **Anyone wishing to rely on an expert** must write to the court immediately on receipt of this Order to seek permission, giving an explanation why the assistance of an expert is necessary.

5) **You must email hearings.birmingham.countycourt@justice.gov.uk** at least 7 days before the hearing with a telephone number on which you can be contacted for the purposes of the hearing, and if possible a second alternative number. You must state in the heading of your email the case name, case number and hearing date.

Inform the court as soon as possible if the claim has been settled and the hearing is no longer required.

6) [*Here insert any further directions given by the DJ/DJJ*]

At the Hearing the District Judge may:

1. Strike out the claim, the defence, any counterclaim and/or any defence to counterclaim if the parties fail to attend the hearing or have failed to comply with the orders the Court has already made;

2. Decide the outcome of the claim, whether the parties attend the hearing or not;

3. Provide the parties with a view on the strengths and weaknesses of their case by way of early neutral evaluation to help the parties to settle;

4. Conduct a mediation with the parties' consent, to assist the parties to reach an agreed resolution of the claim so that the dispute can be resolved completely at the Dispute Resolution Hearing;

5. Identify the real issues in dispute and seek to narrow the issues between the parties;

6. If necessary, list the claim for a final hearing to take place in person or by video or telephone or to be dealt with on the papers without attendance of the parties, and make an Order requiring the parties to take further steps prior to a final hearing and provide that if those steps are not taken the claim will be struck out.

On the Day of the Hearing

- Be ready to accept the telephone call from the court on the telephone number you have provided during the time period indicated above. Ensure that any call screening/barring service will not prevent the call coming through to you.
- If you miss a telephone call from the court, DO NOT TELEPHONE THE COURT - the court will try to contact you a second time, and if your telephone is engaged, then you will not receive the call.
- Ensure you have contact details to hand so that if the matter is listed for a final hearing you can provide telephone/email contact details for the party and any witnesses

IF YOU DO NOT COMPLY WITH THESE DIRECTIONS AND PARTICIPATE IN THE TELEPHONE DISPUTE RESOLUTION HEARING THE CLAIM, THE DEFENCE AND/OR THE DEFENCE TO COUNTERCLAIM MAY BE STRUCK OUT

A Dispute Resolution Hearing is a Preliminary Hearing with the full range of powers set out in Civil Procedure Rule 27.6

Birmingham County Court Small Claims Track Dispute Resolution Hearing Pilot Scheme –

Tick Box Form for Orders [Jan 2021v.4] **Claim No:**

Before (Deputy) District Judge _____ by telephone on _____

Upon the court listing this matter for a Dispute Resolution Hearing

And Upon reading the court file

And Upon

hearing _____ for the Claimant ☐ in person ☐ not attending

hearing _____ for the Defendant ☐ in person ☐ not attending

☐ It is recorded that:

- **where one or both parties did not attend:**

☐ The Claimant ☐ The Defendant failed to provide the court with a contact telephone number in breach of the court's order listing this hearing

☐ The court ascertained from the documents on the court file a telephone number for the

☐ Claimant ☐ Defendant [and]

☐ the court telephoned the Claimant at the following times: and the Claimant did not answer the call.

☐ the court telephoned the Defendant at the following times: and the Defendant did not answer the call

- **where the claim or defence is struck out**:

☐ Upon the court finding that:

☐ the Claimant's Statement of Case and any written/documentary evidence relied upon discloses no reasonable grounds for bringing the claim

☐ the Defendant's Statement of Case and any written/documentary evidence relied upon discloses no reasonable grounds for defending the claim

[And/Or] ☐ the Claimant ☐ the Defendant has failed to comply with the court's directions Order(s) dated:

☐ **IT IS ORDERED that:**

☐ The claim is struck out ☐ dismissed ☐ The defence is struck out

☐ There be summary judgment for the Claimant in the amount of £_____

☐ The Defendant shall pay the Claimant the amount of £_____ ☐ and costs on the small claims track basis of £ _____ [*Issue fee, solicitors' costs on issue, any other court fee paid*], to be paid by [14 days *from the date the order is drawn by the court staff*]

- **Where the parties settle – Tomlin Order**:

☐ Upon the parties having reached agreement in the terms set out in the attached Schedule

It is Ordered that:

1. This claim is stayed upon the terms set out in the Schedule, save for the purpose of carrying those terms into effect, and for that purpose the parties have permission to apply to the court.

2. No order as to costs.

Schedule [***Note to staff – Schedule must be printed on a separate page from the order*.]**

The parties agree the following terms in full and final settlement of the Claim [☐ and Counterclaim]:

[(D)DJ - please set out below numbered paragraphs recording agreed terms.]

☐ see attached additional page

- **where a final hearing is required**:

☐ It is Ordered that:

☐ This matter is listed for a final hearing:

☐ Not before (D)DJ _____ who conducted a mediation/early neutral evaluation at today's hearing

☐ to be dealt with on the basis of the **documents** filed by the parties, on the first open date after 21 days, **time estimate**:

☐ by **telephone** using BT Meet me on the first open date after 21 days, with a **time estimate** of:

The telephone numbers to be used for the parties are recorded as follows:

Claimant:

Defendant:

[*Please set out names and numbers including any known numbers for witnesses.]*

At least 7 days prior to the hearing the parties must provide to the court by email to [*smallclaims.birmingham.countycourt@justice.gov.uk*] [any additional or updated] telephone numbers on which all parties attending the hearing can be contacted.

☐ By **video** using Skype for business, Microsoft Teams or CVP on the first open date after 21 days, with a **time estimate** of:

The email addresses to be used for the parties are recorded as follows:

Claimant:

Defendant:

[*Please set out names and include any known email addresses for witnesses.]*

At least 7 days prior to the hearing the parties must provide to the court by email to [*smallclaims.birmingham.countycourt@justice.gov.uk*] [any additional or updated] email addresses for all parties and witnesses who are to attend the hearing so that they can be invited to attend the video court hearing.

☐ The final hearing will take place **in person** at Birmingham Civil Justice Centre or at such other place as the parties are notified, on the first open date after 6 weeks with a **time estimate** of:

For the purposes of allocating a suitable hearing room, it is recorded that the **number of people attending** the hearing including the parties, their representatives and witnesses will be:

[ ] for the Claimant(s) [ ] for the Defendant(s) [ ] for [ ] **Total**: [ ]

The parties must inform the court immediately if this number changes.

- **where additional documentation is required**

☐ at least 14 days prior to the final hearing the parties shall send to each other any additional documents and witness statements they intend to rely on at that hearing. Failure to comply with this Order will mean that the party will not be entitled to rely on any additional documentation without permission of the court.

- **In all cases where a final hearing is listed:**

☐ The parties must ensure that at the final hearing the court and every other party and any witnesses have access to a paginated bundle of the documents they wish to rely on. For hearings by telephone or video a bundle must be provided to the court and the other parties by email in pdf format at least 7 days prior to the final hearing unless the court orders otherwise.

☐ The parties must notify the court as soon as possible if the matter is settled prior to the date of the final hearing.

☐ **WARNING: Failure to comply with the requirements of this Order in relation to the final hearing is likely to lead to your case being struck out.**

☐ Additional Directions/Recitals**:** *[please indicate where these additions should appear on the Order by way of numbering/* or some other clear indication]*

---------- ----------

(D)DJ Signature & Name Date

Annexe 3 - Hereford and Worcester documentation

- Guidance
- Standard directions
- Sample Dispute Resolution Preliminary Hearing Order

GUIDANCE ON WORCESTER & HEREFORD SMALL CLAIMS

Introduction

This guidance is intended to assist DDJs dealing with Small Claims in Worcester, Hereford and Redditch Of course, each area is dealing with the COVID crisis in its own way depending on its own situation. We have an unusual system as we only have three open courts shared with Family, but proportionately more Civil work between fewer judges (3 DJs and one Civil CJ). Please ask us if you have any questions).

Since June 2020, we have piloted a 'triage system' in most Small Claims cases requiring parties to send in all statements and documents on which they intend to rely before they get a hearing date. They will then be 'triaged' by DJs/DDJs; who may strike them out on the papers with a right to request a relief from sanction hearing (which you may conduct); make unless orders (which you may see in boxwork); or list them either for Preliminary Hearing by telephone; or for Final Hearing: almost always remotely.

Small Claims Allocation

If you allocate in boxwork to the Small Claims Track using 'Allocation Sheet', there are five options:

- Firstly, if you consider a claim is suitable for Small Claims Mediation - tick the box at the top
- Secondly, if it is a RTC / Credit Hire with both sides represented, you can list through to hearing (which will be remote by default) by ticking 'No-Triage' and then appropriate additional directions
- Thirdly, if it is another case with both sides represented and triage is unnecessary, you can list through to hearing by ticking 'No-Triage' and then appropriate additional directions
- Fourthly, if it is a PPI case, please list for 'PPI Triage'. This requires parties to file all statements and documents on which they rely before they are listed.
- Fifthly in other cases, please list for 'Standard Triage' – again it requires all statements and documents up front before the parties get a hearing date.

Small Claims Triage

This will reconsider the claims directed for triage (the fourth and fifth options above) before they are listed for hearing when all the paperwork is to hand. You should expect to spend 5-10 mins on a case. Each file will have a 'Small Claims Triage' sheet. Triage is an opportunity to do three things:

- Firstly, please check whether there has been compliance with the pre-triage order. This warns the parties that if they fail to comply they may be struck out, so please consider unless orders or strike out if you consider it appropriate (of course they will be able to apply to set aside);
- Secondly, please check whether any party has flagged a 'vulnerability' for the purposes of CPR PD 1A requiring participation directions. If so, please discuss with a DJ for our local practice.
- Thirdly, list the hearing. We have very little Court space, so the 'default option' for Small Claims is Remote Trial by MS Teams which the parties are told in the pre-triage directions they will need to access. Please consider this when choosing between the five options for hearing:
    - If remote hearing by MS Teams will be appropriate, please tick 'SCH1'.
    - If it is a PPI case, it will be in a 'block-list' by MS Teams (see below) so please tick 'SCH-PPI'
    - If the parties have agreed a paper hearing under CPR 27.10, please tick 'SCH 2'
    - If you consider the case would benefit from 'Preliminary Hearing' (see below) tick 'SCH 3'
    - If the case requires an attended hearing tick SCH4

Dispute Resolution Preliminary Hearings

This is similar to an 'FDR' in Family money cases. These will be given a morning or afternoon 'window' of up to 45 minutes each (at most 3 in the morning and 2 in the afternoon) for you to call out on BT Meet Me when you are ready. You will have written instructions and front sheet with numbers.

We encourage you to conduct FDR-style 'Early Neutral Evaluation' ('ENE') which now under CPR 3.1(2)(m) does not require the parties' consent – *Lomax v Lomax [2019] EWCA Civ 1467*. You should already have all the statements and documents on which parties rely and so you should be able to form a relatively robust provisional view of the merits. By definition you will be recusing yourself from the final hearing. If a way of resolving the case opens up, we would encourage you to encourage the parties to take it. If they need to reflect longer, please encourage that process and for them to submit an agreed email which the Court can turn into a *Tomlin* Order in DJ boxwork by giving them 28 days before the case is given a Final Hearing listing. However, unless settlement has been agreed at the hearing, please set up for Final Hearing by clearly marking up the file with the essence of your indication and any issues narrowed or agreed in recitals, a time-estimate and format for that final hearing – by telephone, Teams or attended (and if so why and by how many).

PPI Block Lists

The majority of PPI claims have been settling often last minute without notification to us, so we 'block-list' five a day by MS Teams on the basis that at least 2 or 3 will settle. However, they are listed for 90 mins so you could do up to 3 a day at times we notify to the parties the day before with the invite.

Remote Final Hearings

As explained, most final hearings will be remote by MS Teams. We have been conducting such hearings through lockdown by phone, Skype and now Teams and whilst technology can sometimes be infuriating, the real problem we found was the absence of documents. That has been addressed by our 'statements and documents up front' approach. We now regularly do remote Small Claims hearings and they usually go smoothly. However, we appreciate that some DDJs will have more familiarity than others with the technology. If in doubt ask one of us or the staff as we are all now old hands – our DSO is [omitted for CJC]. If you have a laptop for Teams hearings, staff will set them up. If not, we will have a spare available in a room where there is a large TV screen which is easier to use.

Any Questions?

If you have any questions or concerns, please let us know [Contact details omitted for CJC]

Jim Tindal

Judy Gibson

Nadeem Khan

Victoria Solomon

01/04/21

The County Courts at Worcester and Hereford	Claim number:
Standard Directions Form <u>to be used in all cases</u>	

Small Claims Track	Suitable for SC mediation ? ☐ (SCA-Med) (eg. low value and/or both sides unrepresented)		
Standard pre-triage directions *(DDJs* All SCs except Med /PPI/RTC unless DJ agrees)	YES/NO	(SCA - Tr) ☐	
PPI Triage Directions	YES/NO	(SCA - PPI) ☐	
No-Triage Directions	YES/NO	(SCA1) ☐ See 'Additional Directions' below	
Paper disposal CPR 27.10 ?	YES/NO	(SCA9) ☐	
Assignment case, docs not filed	YES/NO	☐ (SCA – Ass + NOT1)	
ELH……		*(RTA & Credit Hire 2 Hrs or if liability or quantum agreed 90m; Stage 3 Hrs 30m; Infant Settlement 15m + 5m per extra child)*	
Back to Back listing ?	YES/NO		
Additional directions:	RTA ☐ (SCA2)	Credit hire ☐ (SCA3)	Breach of duty ☐ (SCA5)
DVD evidence ☐ (SCA8)	Contract ☐ (SCA4)	Holiday ☐ (SCA7)	Landlord/Tenant ☐ (SCA6)

Fast Track (All dates calculated from date order typed unless otherwise ordered. However, if approving parties' orders the Judge should please amend dates by hand).	STAY for settlement/negotiations ☐ (STA1 & STA5) STAY for compliance with Protocol ☐ (STA12)	
Standard fast track directions *(<u>ELH</u> <u>½-day</u> if 1-3 witnesses and RTA, Trip/Slip or Consumer;* *<u>1 day</u> if 4+ witnesses or Workplace PI/NIHL. Otherwise as appropriate)*	(Personal Injury) ☐ (FTLX) **ELH**: one day / half day (listed at 10am) Other:	Non – personal injury☐ (FTLX2)
Additional paragraphs	RTA ☐ Accident at work ☐	Credit hire ☐ Holiday Sickness & Video Link ☐
Other directions (please use short codes):		

Enter judgment: YES/NO (DISP1) Disposal directions: YES/NO (DISP6)

Multi track (all dates calculated from date order typed unless otherwise ordered)	Allocate to multitrack and list CCMC; By telephone ELH 60 minutes. ☐ (CMC1B)

Other (please use short codes):

Courtroom / Special Measures	
Screens	
Video Link	
Telephone Evidence	
Court Room Required	

(Deputy) District Judge …….. Date:

IMPORTANT: YOU MUST READ AND COMPLY WITH ALL DIRECTIONS BELOW. FAILURE TO DO SO MAY RESULT IN YOUR CLAIM OR DEFENCE BEING STRUCK OUT.

RESOLVING THE CLAIM

The Judge encourages you to talk to the other party(ies) in the case to see if you can agree a resolution to it. If so, you can send in a document headed 'Consent Order' and dated setting out your agreement and either both sign it and email it to hearings.worcester.countycourt@Justice.gov.uk . A Judge is likely to approve that order and that will be the end of the case. **However, unless you have sent in a Consent Order within 21 days, you will still need to comply with the rest of this order.** If you cannot agree a resolution, you may be able to agree that a Judge can decide the case on paper without a hearing, which will normally be much quicker than waiting for a hearing. If so, you must each write to the Court to confirm you agree to 'paper decision' when you send in the documents and statements referred to below. **However, the parties must carry out the steps set out in the timetable below notwithstanding the fact that either they have agreed to, or that the court has encouraged the parties to, attempt to resolve the dispute by negotiation or by engaging in mediation via the small claims mediation service. Pursuant to CPR 3.8 and CPR 51Z the parties are prohibited from extending this timetable by agreement and if an extension is required, it must be applied for.**

DIRECTIONS FOR THE CLAIM

The parties MUST follow the steps below to prepare for the hearing:

1) This Claim is allocated to the Small Claims Track and the parties are referred to Part 27 of the Civil Procedure Rules and the Practice Direction of that Part for guidance on how the hearing of the claim will be conducted.

2) Each party must deliver to the other party and to the court office copies of **ALL DOCUMENTS AND STATEMENTS** on which that party intends to rely at the hearing no later than [INSERT: 21 DAYS AFTER SERVICE OF ORDER]

3) **IF A PARTY HAS NO DOCUMENTS TO SUBMIT, THEY MUST EMAIL THE COURT BY THAT DATE TO SAY SO, OTHERWISE THEIR CLAIM OR DEFENCE MAY BE STRUCK OUT.**

4) If at all possible documents and statements should be emailed to hearings.worcester.countycourt@Justice.gov.uk marked in the subject line 'Small Claim' and the Claimant's and Defendant's surnames and case number. If a party is represented by a solicitor, they must email an indexed PDF bundle.

5) The documents to be sent to the other party and the court **MUST** include the statements of all witnesses (**including the parties themselves**) which must:
   a) Start with the name of the case and the claim number;
   b) State the full name and address of the witness;
   c) Set out the witness's evidence clearly in numbered paragraphs and pages;
   d) End with this paragraph:

      'I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'; and

   e) be signed by the witness and dated.

6) If a witness is unable to read the statement in the form produced to the court, the statement must include a certificate that it has been read or interpreted to the witness by a suitably qualified person. If a witness who has made a statement is to give evidence or be cross-examined and is unable to do so in spoken English (or Welsh if the hearing is in Wales), the party relying on that witness must ensure that a suitable independent interpreter is available.

7) Neither party may rely on any report from an expert unless permission has been granted by the court by this or any subsequent order. Anyone wishing to rely on an expert must apply to the court immediately on receipt of this Order and seek permission by way of application ON Form N244) and payment of £100.

8) The hearing is very likely to be heard remotely by Microsoft Teams. Access to this technology will have to be arranged by the parties themselves. If any party or witness has a disability or similar vulnerability which may adversely affect

their participation in the case or giving of evidence, they should highlight this in the covering email submitting statements and documents.

9) The parties are encouraged always to try to settle the case by negotiation. The parties are encouraged to contact each other to try to settle the case or narrow the issues. The court must be informed immediately if the case is settled.

10) **If the Claimant fails to comply with this Order, the claim may be struck out without further warning under CPR 3.4 and the provisions of CPR 3.5 and/or CPR 3.9 shall apply. If the Defendant fails to comply with this Order, their Defence may be struck out without further warning under CPR 3.4 and the Claimant may apply for Judgment under CPR 3.5.**

FOR HELP PREPARING WITNESS STATEMENTS VISIT THIS WEBSITE:

www.advicenow.org.uk

Sample Dispute Resolution Preliminary Hearing Order

In the Worcester County Court Case No: _____

Case Name:

GIVEN THE CIRCUMSTANCES OF THE CURRENT CORONAVIRUS CRISIS AND THE COURT'S DUTY UNDER CIVIL PROCEDURE RULE [CPR] 1.1 (2) (e) THE NEED TO ALLOT AN APPROPRIATE SHARE OF THE COURT'S RESOURCES AND 1.4(2)(J) TO DEAL WITH THE CASE WITHOUT THE PARTIES NEEDING TO ATTEND COURT,

BEFORE DJ ON HAVING REVIEWED THE FILE, IT IS ORDERED:

1. The Judge considers this claim should be listed for a Dispute Resolution Preliminary Hearing by telephone. This hearing will not normally include hearing evidence and will only require participation by the Claimant(s), Defendant(s) and lawyers not witnesses, but a Judge may:
    a. Dismiss the claim and/or any counterclaim if a party fails to attend the hearing;
    b. Strike out the claim, the defence, any counterclaim and/or any defence to counterclaim as having no reasonable prospects of success under Civil Procedure Rules 3.4(2)(a) and 27.6(6);
    c. Strike out the claim, the defence, any counterclaim and/or any defence to counterclaim if a party fails to attend the hearing or comply with a Court Order under CPR 3.4(2)(c);
    d. Identify the real issues in dispute and seek to narrow the issues between the parties and conduct 'early neutral evaluation' to assist the parties to reach an agreed resolution of their dispute either at that hearing or without a further hearing under CPR 3.1(2)(m);
    e. Only if necessary, list the claim for a final evidential hearing (i.e. a 'trial') and make an Order requiring the parties to take further steps prior to that final hearing and provide that if those steps are not taken the claim will be struck out.

2. **Please do not attend Court**. The Preliminary Hearing will be heard remotely by Telephone on …….. 2020 for up to 45 minutes [in a 3 hour window from 10am-1pm or in a 2 hour window from 2pm – 4pm]. You must be available to receive the phone call from the Court during this period in a place where there is minimal background noise and you have access to the paperwork so that you can discuss your case with the Judge. Although the hearing is being held remotely the rules regarding conduct of parties at a hearing still apply.

3. Unless the Claimant by 4pm on pays to the Court the trial fee of £……. or files a properly-completed application for help with fees (i.e. one which provides all the required information in the manner requested) the claim will be struck out with effect from that date without further order (and unless the Court orders otherwise, the Claimant will be liable for the costs which the Defendant has incurred). Payments can be made by credit/debit card by telephone (01905) 730800, by cheque made payable to HMCTS and sent to Worcester County Court, The Shirehall, Worcester WR1 1EQ or if neither option is practicable, paid in cash at that location.

4. You must email the Court on hearings.worcester.countycourt@justice.gov.uk clearly stating the case number(s), name and date and time of hearing by 4pm at least 3 working days before the hearing, and stating the telephone number you wish to use and ensure you are available at the time and date given above. **If you cannot be contacted at the hearing you will be treated as failing to attend and your Claim/Defence as appropriate may be struck out.**

5. If Solicitors are acting for either party:- The Claimants solicitor (if the claimant is represented) or the Defendants solicitor (if the Claimant is unrepresented but the defendant is represented) MUST send to the Court and to the other side. One paginated bundle including all the relevant documents of both parties not less than 7 days before the hearing. If solicitors are not acting for either party:- The parties must ensure they have available at the Hearing all the papers in the case from both parties so that they can refer to them.

6. No unauthorised person may be present at the remote hearing. When asked any legal representative and party must be able to confirm that no unauthorised person is in attendance at the hearing or able to listen to the hearing. No person attending the hearing shall make a recording of the hearing unless specifically required by the Court.

7. Subject to the Judge's direction, the hearing will be in public under p.3 of Practice Direction 51Y https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51y-video-or-audio-hearings-during-coronavirus-pandemic because publication of court lists on Courtserve the day before the hearing with a notice means a member of the Press will be 'able' to access the hearing if they apply to the Court.

   Dated 2020