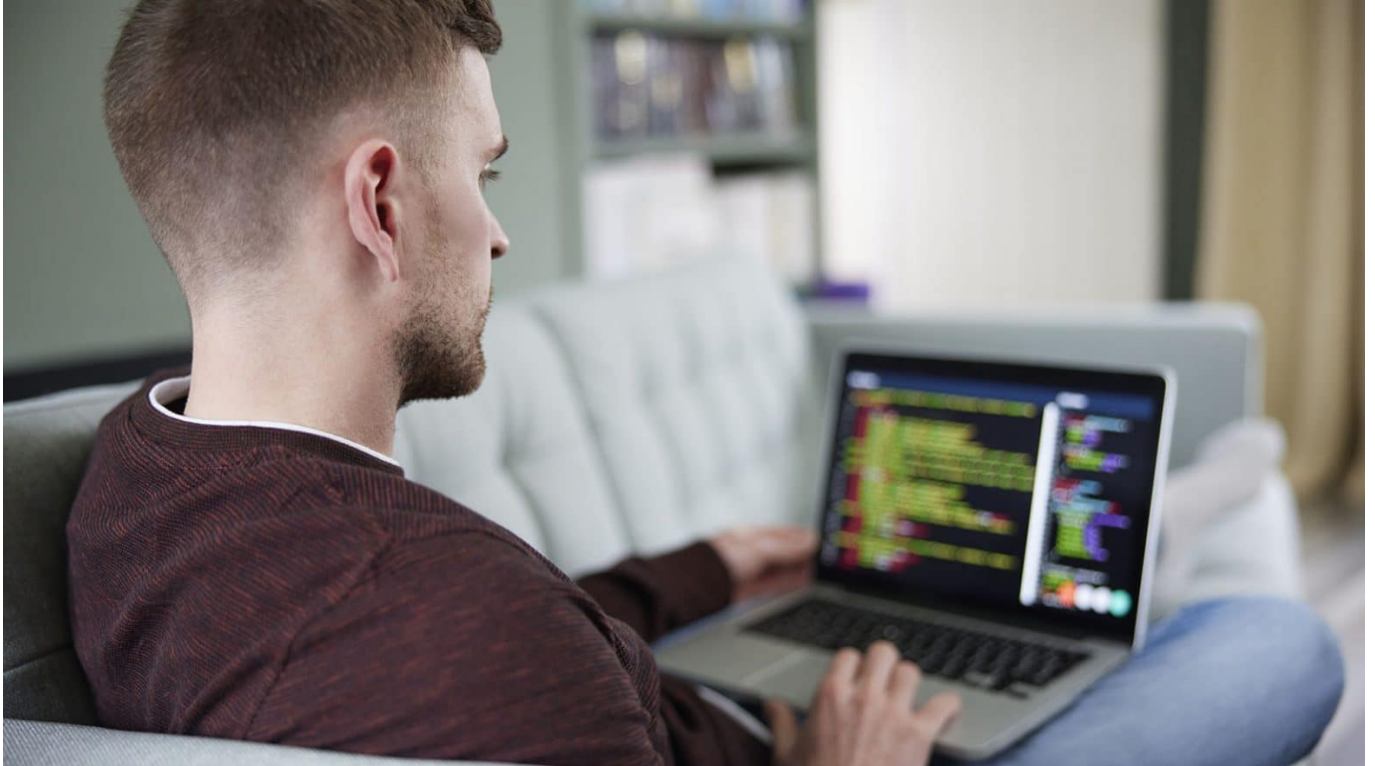


Compulsory mediation to be implemented on all small claims



Engagement in mediation of small claims (up to a value of £10,000) has long been encouraged by the Courts. Actual engagement by litigants with the court's free, Small Claim Mediation Service ("SCMS") has however, remained sporadic. This is set to change, however, following the Ministry of Justice's ("MoJ") announcement last week that mediation will become compulsory for civil claims valued up to £10,000 ("Small Claim").

What will change?

Presently, where a Small Claim issued in the County Court (or Money Claims Online) is defended, the parties are required to file a *'Directions Questionnaire'*. Within the directions questionnaire the parties are invited to partake in mediation operated by the SCMS. Participation, however, is presently voluntary and the mediation will not go ahead unless both parties agree. In the MoJ's planned reforms mediation will become compulsory for all Small Claims. In addition to money claims, this will include claims over housing conditions and personal injury claims.

When will compulsory mediation come into effect?

The MoJ has not set a specific date for implementing Compulsory Mediation on Small Claims. The reforms will require amendments to the Court's Civil Procedure Rules and the existing Small Claims Procedures therein. Thus, it is anticipated that the reforms will come into effect at some point in 2024.



How will the small claims procedure change?

The introduction of compulsory mediation will not significantly alter the small claims procedure. A claim will be commenced in the usual manner, by the claimant filing a claim form. If the claim is defended, the parties will still need to file and serve a directions questionnaires. This will be expanded however, with the parties being asked for dates to avoid for the mediation as well as the final hearing of the claim.

The court will then collate information from the parties' returned directions questionnaires and send this to the SCMS. Within 28 days of it receiving the case details, the SCMS will notify the parties of the date of mediation. This will take into account the dates to avoid stipulated in the parties' respective directions questionnaires.

How will a small claim mediation work?

The SCMS mediation will continue to be free of charge and will be conducted remotely via telephone. Parties will receive confirmation of a 3-hour appointment window on the date of the mediation in which a 1-hour telephone mediation session takes place. In exceptional circumstances, the parties may request to re-arrange the mediation appointment.

The mediator will be a court employee assigned by the SCMS. At the Mediation Appointment, the mediator will ring each party and speak to them in turn. This means the parties only talk to the mediator and not to each other. The mediator will listen to each party's concerns and explore areas of potential compromise.

If the parties can agree a settlement, this will be written up by the mediator into a formal settlement agreement. This will be sent to the parties for approval and then registered with the court where it will be approved as a sealed order and become legally binding.

If the parties are unable to reach settlement the case will continue to a hearing before a judge (as per the existing Small Claims procedure).

Are there consequences for failing to partake in Mediation?

In short, yes. If a party does not attend their scheduled Mediation Appointment, a judge can apply a suitable sanction. This can range from a party's claim or defence being struck out entirely (whereupon, in the case of a defence being struck out, a claimant could apply for judgment to be entered), or a cost sanction, whereby the non-compliant party is ordered to pay for part or all of the other party's legal or court costs (even if the judgment overall is in favour of the non-compliant party).

Will mediation become compulsory on higher value claims?

This is the longer-term aim of the MoJ, who want to implement compulsory mediation in due course on fast-track claims (with a value between £10,000 and £25,000) and multi-track claims (with a value over £25,000). The integration of mediation within higher value claims, however, will involve referring parties to external mediators, rather than assigning mediators employed by the Court and the SCMS.

How could compulsory mediation benefit your business?

The introduction of compulsory mediation on small claims could potentially generate significant cost, time and resource savings for your business.

If you are accustomed to issuing small claims (typically by way of debt recovery actions), you will have likely encountered defendants who enter a minimal defence and will not agree to mediation, resulting in the claim



becoming protracted. Often, the final hearing can be months (if not over a year) on from the date the claim was issued. This can involve considerable and moreover (under the small claims rules) irrecoverable legal costs.

The introduction of compulsory mediation should have the effect of compelling defendants to properly engage with a claim early on; thus creating the opportunity for early case resolution and quicker payment by debtors at reduced costs.

How we can help

If you would like to learn more about mediation, issuing money claims at Court or our debt collection services then please contact our [debt recovery team](#).



[Ben Ashworth](#)

Partner



[Will Angas](#)

Partner



[Gina Hope](#)

Legal Manager