

EXCERPT FROM SMALL CLAIM GUIDANCE NOTES, 04 GOING TO COURT, FROM SCTS WEBSITE

4.04 Do I need a solicitor for the court hearing?

IF YOU ARE ACTING IN A PERSONAL CAPACITY (as an individual) you do not need to employ a solicitor at any stage of a small claim. If you do, however, you will be liable for payment of solicitor's fees. Legal aid is not available for small claims cases (except for an appeal).

A list of solicitors can be found in the yellow pages of the telephone directory or online at [the Law Society of Scotland](#) website.

You can alternatively authorise someone else to represent you, known as an "authorised lay representative", who may be, for example:

- A friend
- A relative
- A representative of the Citizens Advice Bureau, Consumer Protection/Trading Standards department, or other advice agency, who may be able to do this for you free of charge (see paragraph 4.02 of this guide).

From 1st January 2011 new court rules apply and you will be able to ask the sheriff to permit a named individual to assist you during the court proceedings, known as "lay support". They will be able to sit beside or behind you during hearings in the courtroom or in the sheriff's chambers. Although they won't be able to speak on your behalf, they will be able to provide you with assistance in the following ways:

- by providing you with moral support
- by helping you to manage the court documents and other papers
- by taking notes of the proceedings
- by quietly advising on:
 - points of law and procedure
 - issues which you may wish to raise with the sheriff
 - questions which you may wish to ask witnesses

The supporter does not need to be legally qualified.

You can ask the sheriff to permit the named individual to assist you at any time during the proceedings. You would simply need to ask the sheriff to allow this when the case calls in court. The court must grant your request, unless the sheriff is of the opinion that the individual is not suitable to act as a lay supporter; or that it would not be appropriate for some other reason.

Where permission is granted, it remains in place until the case is finished or permission is withdrawn. You should also be aware that the individual cannot assist you during any period when you are represented by a solicitor.

The sheriff may withdraw permission on their own initiative or on the motion of any party but only if the sheriff is satisfied that if the permission were to continue it would result in the inefficient administration of justice.

You are allowed to show the individual providing you with support, any document, including court documents, and provide them with any information you have in connection with the proceedings. However, the supporter would then be subject to any prohibition or restriction on the disclosure of the document or the information which applies to you.

It is a condition of the permission being granted by the sheriff, that the lay supporter does not receive any payment from you for their assistance, either directly or indirectly. Also, you cannot claim any expenses you incur as a result of an individual's support in the proceedings.

IF ACTING ON BEHALF OF A CORPORATE BODY (e.g. a company, firm etc.)

The rules of court provide for an authorised lay representative to conduct the case on behalf of an artificial entity (company, association etc) including appearing at any hearing of the court. The authorised lay representative may do anything that the party would be able to do for themselves including for example asking the court for a final order (known as minuting for decree).

It should be noted however that it is open to the presiding sheriff to find that a person appearing in court on behalf of a company is either not authorised to appear or not a suitable person to represent the company. In those circumstances the person must cease to represent the company.