

# Using the Small Claims Court Procedure

The Civil Procedure Rules (CPR) govern how to bring a claim in the county court. If you have a dispute where the amount you are claiming is £10,000 or less your case would be allocated to the small claims track. The small claims track is designed to enable individuals or companies to bring a claim (or defend a claim) swiftly and conveniently. The use of solicitors in this process is discouraged by their costs not being able to be covered win or lose. The person bringing a claim is called the Claimant and the person defending a claim is called the Defendant.

The type of claims you can bring include (but are not limited to):



Debt - someone (a customer or a personal acquaintance) owes you money.



A service has been carried out badly e.g. a builder has not carried out building works adequately.



An item you have purchased does not work properly or an item you have bought online does not match its description.



Your tenant has not been paying their rent.



Your landlord has not carried out repairs (limited to £1,000).

Your case will need to be proved on the "balance of probabilities". To be successful the Claimant will need to show that your version of events is more likely to be true than your opponent's version of events.

# Making a Claim

## - Q&A

### **Where should I start?**

It is always considered best to try and resolve the dispute personally without immediately starting court proceedings. Most people will respond better, and more creative solutions can often be found, without the added pressure of a court case.

You should keep record of all of the correspondence you have with the other party. If there are any witnesses to your dispute, ask them to write down what they witnessed as soon as possible while their memory is fresh.

If your attempts to resolve the dispute do not work, the next step is to send a formal letter of complaint, often called a letter before action.

### **What should I include in my letter before action?**

You should set out what was agreed between you and the other party. If you have any written agreements include them with your letter. If your agreement was made orally, include details of when and where the agreement was made and what was said. You should also include details of any payments that have been requested and any payments that have been made. Clearly identify your complaint and why the other party is responsible. If damage has been caused, include evidence such as photographs. Include details of any losses you have suffered for example the cost of repairs or replacements or extra expenses you have incurred as a result of what has happened.

Set out the remedy or outcome you would like, for example payment of your bill or the action you would like them to stop. If you seek payment, state how you would like the other party to pay. Give the other party 14 days to respond and outline what action you will take if you do not hear from them, namely starting legal proceedings with the Court to deal with the dispute. You should mention that this will increase any amount claimed with the addition of interest and court fees.

## **What are my alternatives to court?**

Whilst sometimes this is not possible, going to court should always be viewed as the last resort. It is always advisable to resolve the dispute yourself and try to reach a suitable agreement with the other party.

If both parties agree, an independent mediation company can be used to help you come to an agreement. The mediator is not a judge and does not look to find a 'winner' or a 'loser' but rather an outcome acceptable to both parties all the while encouraging constructive discussion.

Therefore neither side is likely to get their best possible outcome. It is sometimes a good idea to get some legal advice before starting mediation to ensure your claim is sustainable. An important consideration before taking your claim further is whether your opponent can actually afford to pay what you claim. Even if you win in court it does not mean that the other side will pay you.

## **How can I start my claim in the small claims court?**

To start the claim you will need to complete a Claim Form (Form N1) which can be obtained from your local County Court or online using the HM Court and Tribunal Form Finder Service at <https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>.

On the Claim Form there is a section called 'Particulars of Claim'. Here you should set out your claim in similar details as was included in your letter before action. You can include a separate piece of paper if needed. You will need to sign and print your name in the section headed 'Statement of Truth' to show the information in the Particulars of Claim is true. It is important to understand that the Claim Form is a legal document and there will be legal consequences if it is later shown that you lied or misled the court in any aspect of your dispute. After this has been sent to the Defendant you cannot make any amendments to the document unless the Courts allows you to.

If someone owes you money or you are seeking damages, the Claim Form needs to be sent to the Money Claims Centre at County Court Money Claims Centre, PO Box 527, Salford, Greater Manchester, M5 0BY. Alternatively you can make your claim online: <https://www.gov.uk/make-money-claim-online>. You will need to send your Claim Form along with: a copy of each opponent; the court fee; any written agreement you are seeking to rely upon. The court will send your form to the defendant who must respond within 14 days.

# Defending a Claim

## - Q&A

### **I have been served with a Claim form, what should I do?**

You **MUST** respond to the Claim Form within 14 days. If you do not respond within 14 days the Claimant may obtain a default judgement against you, without a trial. The Claimant can enforce the default judgment immediately by a bailiff attending your property, attaching to your earnings or your bank account, putting a charge on your home or your bankruptcy if you are an individual and the debt is over £5,000.

You can respond to the Claim Form by:

- 1** Filing an Acknowledgement of Service - this is recommended if you need more time to compile your defence as the time to file your defence with the Court is extended to 28 days.
- 2** Filing a Defence stating you wish to defend all (or part) of the claim.
- 3** Filing an Admission if you admit you are to blame (which can include putting forward a proposal for payment by instalments if appropriate).

It is possible to file a defence to one part of the claim while admitting another part of it. If you do admit to any part of the claim the Court will make a County Court Judgment against you for that part which may affect your credit rating. the defence will be sent to the Claimant who will be given the opportunity to reply.

### **I think the Claimant is actually in the wrong, can I take action against them?**

It is possible to file a Counterclaim against the Claimant at the same time as filing your defence, You will need to set out your Counterclaim as if it was a separate Particulars of Claims. However, remember that the Defence and Counterclaim should be included in one document. You will also have to pay a fee in line with the frr guidance which ca be found here: <https://www.gov.uk/make-court-claim-for-money/court-fees>.

# What happens next?

## **The Directions Questionnaire and Disclosure**

Both sides will be sent a directions Questionnaire to be completed and returned to the court. In the Directions Questionnaire you must list any witnesses you would like to bring to the hearing (this can include an expert witness - see below). It will also ask if you have any special needs, such as requiring wheelchair access or an interpreter.

Once the Directions Questionnaire is returned and reviewed by the judge you will receive the Notice of Hearing which will give the date for the hearing. Hearings are usually given a time estimate of between 1 and 2 hours. The Notice of Hearing will state the Hearing Fee that is payable. You will also be given Directions which explain what you have to do in preparation for the hearing. One important pre-trial preparation you will need to carry out is disclosing the documents you will be relying in at court to the other side and preparing and exchanging witness statements. The deadline for doing so will be given in the Directions.

## **Can I use expert evidence?**

It is often a good idea to ask an expert to write a report regarding any dispute. For example, if you have a dispute with your builder, you can ask another builder to inspect the work, outline why the work was not carried out satisfactorily and provide a quote for putting the work right. You will need to pay the expert for this but should be able to claim the cost back from the other side if you are successful. The expert's report should be provided to the court and it is often the case that the expert does not need to attend the hearing. You should often ask the Defendant if they are prepared to agree to an expert being jointly instructed.

## **What should I expect when I attend court?**

There is normally just one hearing in any small claims dispute. You are obliged to attend the hearing along with any witnesses who have been asked to provide witness statements prior to the hearing.

If you cannot make the hearing you can request an alternative date. You should write to the court as soon as possible giving the reason(s) for your request and providing evidence, for example your holiday booking confirmation or hospital appointment confirmation.



It is important to allow yourself enough time to get the court and compose yourself. Upon arrival at the court you will usually be required to go through airport style security. the hearing will take place in a private meeting room known as chambers. It will not be in a formal court room.

In attendance will be the judge, the other party and yourself. It is unusual for either party to have lawyers present. You should dress smartly to give a good impression of yourself but you do not have to wear a suit. The Judge should be addressed as 'Sir' or 'Madam'. Your witnesses will be called from outside the court room when their evidence is required.

Judges approach the hearing in different ways but will always give you the chance to explain your case. Once the Judge has listened to both sides he/she will make a decision, explaining his/her reasons for arriving at that decision. A court order will then be made outlining the decision.

## After the court case

### **What is a court order?**

The court order will explain what is to happen as a result of the Judge's decision. Common examples include money judgment (the Defendant is ordered to pay a Claimant a set amount of money) and injunctions (the party is ordered to stop doing something). The court will send a copy of the order to each party.

### **What happens if the other side does not adhere to the order?**

If an order is not adhered to you will have to go back to court to enforce the order. A fee will be payable to the court. In money claims the court will be able to grant a warrant of control (i.e. sending bailiffs in to collect the payment) or other orders such as an attachment of earnings or changing order over the other side's property.

### **Can I appeal the judgment?**

You will need legal grounds to appeal the decision of the judge, such as a serious mistake in applying the law or serious procedural irregularities. You cannot appeal just because you disagree or are unhappy with the outcome. You should think seriously before asking for an appeal as the costs involved can sometimes greatly outweigh the amount in dispute. There is a fee payable for such an application.

# Additional information

## **What are the benefits of using the small claim court?**

- Claims can be decided without the need for the formalities of a traditional trial
- There is often no need to incur large bills for legal costs - parties can bring a claim (or defend a claim) themselves without the need to instruct a solicitor.

## **Can I recover my costs in the small claims court?**

- In most circumstances, the successful party cannot get the losing party to pay their costs in bringing the claim
- It may be possible to recover the court fees paid, expert witness fees, reasonable travel costs and loss of earnings for the day spent at court.

## **Did you pay by card?**

If you used your credit card to pay for goods or services you may be able to get the credit card company to pay your claim. The following conditions must all be met:

- 1 The cost of the item or service was over £100 but under £30,000.
- 2 At least part of the cost was paid by your credit card (even if you only paid a deposit towards an item, you can still get extra protection for the full amount).
- 3 You are the main cardholder (the protection does not apply to additional card holders).
- 4 You paid the shop or supplier directly (the extra protection does not cover transactions on Amazon Marketplace as the payment is made to Amazon and not directly to the supplier. The extra protection does not always apply if you used PayPal to make the payment).

## **If you need further guidance?**

Martin Tolhurst Solicitors offer a fixed-price initial legal advice meeting which is a 45 minute, face-to-face, session with one of our lawyers who can give you specific advice relevant to your legal matter. If the claim or defence to the claim involves sums nearing the small claims limit of £10,000, it may well still be appropriate to involve a solicitor to assist you in the matter. Fee arrangements can be discussed at such a meeting. To book your first appointment, speak to our New Enquiries team on: 01474 546013.

# Small Claims Court Procedural Flowchart

