



GUIDE TO PURSUING A SMALL CLAIM AT THE COUNTY COURT

County Courts deal with the settlement of private disputes.

What is a small claim?

The **Small Claims Track in the County Court** provides a **simple informal** way of settling a dispute with a value of less than £5000. This can include a claim for personal injury, housing disrepair to residential premises or damages arising from the disrepair as long as it does not exceed £1000.

Examples of claims brought in the County Court include:

- Consumer (faulty goods etc)
- Debt (debt recovery etc)
- Landlord Tenant (deposits, rent arrears/repairs etc **but not possession**)
- Provision of Services (work by building contractors etc)
- Consumer Credit Act (bank charges etc)
- Accident claims

In order to encourage people to act in person only limited legal costs are recoverable in the small claims Court. You will only be able to recover limited fixed costs for legal representation when issuing the claim and will not generally be able to recover the costs of representation at the hearing, even if you are successful. However, the costs rule works both ways and you will not generally be liable for large legal costs should you be unsuccessful.

However, going to Court should always be the final step and there are several steps you should take to resolve your claim first.

Before bringing a claim

If you feel you have a claim the first step is often to **make a complaint** to the person or body you have a grievance with. A call or letter explaining what you feel they have done wrong and what action you would like them to take can often resolve an issue quickly and effectively.

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Telephone 0808 129 3320

If your claim is against a company or organisation they will usually have an **internal complaints procedure** which you can follow in order to resolve your complaint. Although there may be more than one stage to the complaints procedure and it can be frustrating to follow, you should persevere with the process until the matter is resolved or a deadlock is reached.

Check Membership of Professional Bodies and Government Ombudsmen

If the issue is not dealt with satisfactorily following your initial complaint you should **check to see if there are any Ombudsmen, Trade Bodies or Associations** connected to the company or organisation with which you have your **complaint**.

These bodies regulate certain industries and professions and can often **investigate complaints independently**, award compensation or provide advice and expert opinion.

Ombudsman:

- Financial Ombudsman Service: <http://www.financial-ombudsman.org.uk/>
- OTELO (mobile phone, internet): <http://www.otelo.org.uk/>
- OFCOM (mobile phone, internet, TV): <http://www.ofcom.org.uk/>
- Parliamentary Health Services Ombudsman (national government bodies): <http://www.ombudsman.org.uk/>
- Local Government Ombudsman (Local Government departments): <http://www.lgo.org.uk/>
- Energy Ombudsman: <http://www.energy-ombudsman.org.uk/>
- The Property Ombudsman (Estate agents and Lettings Agents): <http://www.tpos.co.uk/>

- The Housing Ombudsman (Housing Associations): <http://www.ihos.org.uk/>
- Civil Aviation Authority (Airline Claims): <http://www.caa.co.uk/>

Useful Trade Associations and Regulating Bodies:

- Glass and Glazier Federation: <http://www.ggf.org.uk/>
- Federation of Master Builders: <http://www.fmb.org.uk/>
- Motor Vehicle Repairers Association: <http://www.mvra.com/public/public.htm>
- Residential Landlord's Association: <http://www.rla.org.uk/>
- Air Transport Users Council: <http://www.auc.org.uk/>
- Solicitors Regulation Authority: <http://www.sra.org.uk/consumers/consumers.page>
- Royal Institute of Chartered Surveyors: <http://www.rics.org/>
- ABTA: <http://www.abta.com/home>

Further useful contacts are listed at the following:

- Trade associations - <http://www.britishservices.co.uk/associations.htm>
- UK Ombudsmen - <http://www.bioa.org.uk/site2/list.php?navletter=L>
- Government Watchdogs - <http://www.ukwebstart.com/listwatchdogs.html>

Letter before Action

If you have still been unable to resolve your dispute you should **send a formal letter** setting out your claim, how you feel the claim will be resolved and give a deadline of at least 21 days failing which legal action will be taken.

In order to set out your claim clearly you should understand its legal basis. For example, if you have a claim for faulty goods your claim will be based in legislation such as the Sales of Goods Act 1979 and the Supply of Goods and Services Act 1984.

If you are **unsure about how to set out your claim** or the law applying to it you can use many of the free information services available, such as:

- Citizens Advice Bureau:
<http://www.citizensadvice.org.uk/>
- Consumer Direct:
<http://www.consumerdirect.gov.uk/>
- National Debt Line:
<http://www.nationaldebtline.co.uk/>
- Community Legal Advice:
<http://www.communitylegaladvice.org.uk/>
- Local Law Centre:
<http://www.lawcentres.org.uk/lawcentres/>
- UK Insolvency Helpline:
<http://www.insolvencyhelpline.co.uk/>

Also, investigate other areas of support that you may have such as, a Trade Union or Legal Expense Insurance which may come as part of a: car insurance, buildings insurance, home contents insurance etc.

How much will it cost?

The fee you have to pay depends on the amount that you are claiming including interest.

You do not have to pay a fee if you receive:

- Income Support
- State Pension Guarantee credit
- Income based Jobseeker's Allowance
- Working Tax Credit with no element of the child tax credit.

Or

- Your gross annual income does not exceed a specified limit.
- Undue hardship – court have discretion to consider a part payment of fee.

Court Fees

- Issuing the claim £30 - £108

If the claim is defended:

Allocation Questionnaire Fee

- No fee for a claim less than £1500
- £35 for a claim between £1500-£5000

Hearing Fee

- Vary between £25 to £500
- Full list of costs: <http://www.hmCourts-service.gov.uk/infoabout/fees/index.htm>

Can I recover costs?

You can usually expect to **recover the Court fees** paid and any **personal expenses** incurred, if you **win your case** these may include:

- Any court fees you have paid
- Up to £260 for legal advice if your claim included an application for an injunction (an order to stop someone doing something or an order for specific performance (order to make someone do something e.g. landlord to carry out repairs))
- Up to £50 per day for you or your witnesses for loss of earnings due to attending court
- Any additional travelling or overnight expenses

- Up to £200 for expert's fees if the court gave permission to use the expert

You are usually **only liable** for the **Defendant's costs** if you **lose**. *However, this is **not a hard and fast rule** and you should take into account the risk of any costs awarded against you compared with the value of your claim before issuing.*

Always make sure the **Defendant** has the **ability to pay** any judgment against him, or has assets to cover the cost of any award. If the Defendant can not pay the judgment it will be little more than an expensive piece of paper.

There are a variety of resources available to **check the financial footing** of a potential Defendant:

- **Companies House** – you can check the trading status of a company, their registered address and order information on their accounts:
<http://wck2.companieshouse.gov.uk/984ce0a58d53279a016fedfc4ceb88b/wcframe?name=accessCompanyInfo>
- **HM Land Registry** – you can order information on who owns the property for any address details you have for the Defendant:
http://www.landregistry.gov.uk/wps/portal/Property_Search
- **DVLA** - you may be able to obtain information on the ownership of any of the Defendant's vehicles, you should be aware that they may be subject to finance/higher purchase agreements:
http://www.direct.gov.uk/en/Motoring/OwningAVehicle/AdviceOnKeepingYourVehicle/DG_4022066

- **Experian** – you can make a credit check on the Defendant providing you have the required information, Experian are the largest credit reference agency in the UK but there are others:

http://www.experian.co.uk/www/pages/what_we_offer/products/score-based-collection-debt-recovery.html

- **County Court Records** – you can check the County Court records for any outstanding judgments against the Defendant:
<http://www.trustonline.org.uk/>

Step 1 – The claim form

To **issue your claim** in the County Court you complete a claim form, this form is called the **N1 claim form** and can be picked up from any County Court or downloaded from the Court services website along with guidance notes at:

Claim form and guidance notes:

- http://www.hmCourts-service.gov.uk/HMCSCourtFinder/GetForm.do?Court_forms_id=338

Alternatively claims can be issued online at:

- <https://www.moneyclaim.gov.uk/csmco2/index.jsp>

The **claim form is self explanatory** and gives basic information about you (the Claimant) and the person you are making a claim against (the Defendant), the value of the claim and what the claim is about. The guidance notes set out what information is required in each section of the claim form with the most detailed section being the **Particulars of claim**.

The **particulars of claim** is the section in which you **set out the basis of your claim**, what you are claiming for and why. It can be included on the claim form itself for simple claims or attached as a separate sheet.

- **Download template particulars** from (<http://www.simpsonmillar.biz/downloads/other/template-particulars-of-claim.doc>).

The particulars of claim only need to **provide enough information for the Defendant to respond** to the claim. They should list the basic facts, point by point and in chronological order if possible, they should then set out the basic legislation or case law relied upon and finally a breakdown of what you are claiming including interest.

You can **claim any interest** set out in a contract or alternatively claims are subject to implied 'Statutory interest' set out below:

Further the Claimant is entitled to interest at the rate of 8% per annum on the sum of £..... from until being days amounting to £..... and continuing at a daily rate of £....., alternative on the sums found to be due for such periods as the Court may think just pursuant to the County Court Act 1984 section 69.

Step 2 – Issuing and Serving the claim

The **claim form and any particulars** should be **sent** to your **local County Court** in **triplicate** along with the **relevant issue fee**. The Court will then issue the claim and serve it on the Defendant.

(See full costs <http://www.hmCourts-service.gov.uk/infoabout/fees/index.htm>)

You can request that the forms are returned to you so that you can affect service of the claim on the Defendant personally. However, it is **recommended that you allow the Court to serve the claim on the Defendant** to avoid any mistakes which may lead to your claim being struck out.

Step 3 - Notice of Issue

Once your claim has been issued the Court will send you '**Notice of Issue**' which will set out when the claim was issued by the Court, when the claim was deemed to be served on the Defendant and by what date the Defendant should respond to the claim.

The Notice of Issue will also have a section for requesting judgment in your favour if the Defendant admits the claim or does not respond to the claim form.

Step 4 – Defendant's Response

Once the claim has been issued the **Defendant** will have **14 days** to do **one of the following**:

1. Admit the claim
2. Deny the claim
3. Counterclaim
4. Acknowledge the claim
5. Not respond

Consumer Protection

The Defendant admits the claim:

Defendant	Accept payment/ defence	Reject payment/ defence
Admits entire claim and pays amount claimed plus costs	The claim is ended, no need to inform Court or take any further action	N/A
Admits entire claim but requests time to pay	You can accept time/rate to pay and request that judgment be entered in your favour	You can reject the time to pay, request that the Court enter judgment and set the time/rate of payment
Admits and pays part of the claim only	You can accept the payment in full and final settlement of the claim, this ends the claim	You can accept the payment in part but reject the defence. Then proceed to a hearing to determine the rest of the claim
Admits the claim but the claim is not for a specified sum	You can request judgment to be entered in your favour; the claim will then be set down for a disposal hearing where the Court determines only the amount of the award not liability	N/A

The Defendant denies the claim:

You will **receive a copy of the Defendant's defence** which will set out the reasons why the claim is denied, the claim will then proceed to a hearing.

The Defendant denies the claim and makes a counterclaim:

The Defendant may make a **counterclaim** which is where the **Defendant makes their own claim against you** in addition to any defence to your original claim. A counterclaim usually follows on from the Defendant's defence and is served at the same time.

You will then have **14 days to file a defence or admit the counterclaim**, there is no option to acknowledge the counterclaim and request further time to respond.

The Defendant acknowledges the claim:

This is where the **Defendant files an acknowledgment of service**, which simply means they have received the claim form and are given an **additional 14 days to respond** with either: an admission, an admission of part or a denial.

The Defendant does not respond at all:

If the **Defendant does not respond to the claim within 14 days** then you may ask the Court to enter 'Judgment in Default' in your favour (see step 5) for the entire amount of your claim plus costs, as if the Defendant had admitted the entire claim.

Step 5 – Entering Judgment in Default

You may **make a request that Judgment is entered in your favour** if either:

- The Defendant has **failed to respond** to the claim form within 14 days
- Failed to file a Defence within 28 days of service of the Claim Form ***if he acknowledged the claim within 14 days of the date of service***
- The Defendant has **admitted** that all the **money is owed**

To enter judgment you should fill in the '**Request for Judgment**' form, which is contained in the notice of issue, and return it to the Court. The form is brief and self explanatory, you can also add interest from the date you issued the claim at the same rate included in your claim form (usually 8%).

The **Court** will then **enter judgment in your favour** and send you a copy of the judgment which will set out the terms of any agreed payment, or state that the Defendant is ordered to pay the sum forthwith. If the Defendant fails to pay the sum due under the order you may then enforce the order through the variety of enforcement procedures available (see section 8 Enforcement).

Step 6 – Preparing for the hearing

If the **Defendant has filed a defence or disputed the amount claimed** the case will proceed to a **hearing**. You should note that although the case is proceeding to a hearing the claim may still be settled at any time, and the Court may offer mediation before listing a hearing date. If you come to a settlement prior to the hearing you should inform the Court immediately.

Allocation Questionnaire

After you have received the notice of defence you will receive a form from the Court called an Allocation Questionnaire.

This form is self explanatory and the Court should be able to answer any questions you may have. **It is essentially an information gathering exercise by the Court.** For example, you can request the Court's permission to use expert evidence, provide the Court with details of any witnesses, dates which you are unavailable and any special requirements you may have, such as an interpreter. The Court then uses this information to list the case and allocate it to the appropriate track.

If your claim is for less than £1500 then returning the Allocation Questionnaire is free, however there is a £35 charge for claims of £1500 - £5000. Your completed Allocation Questionnaire and any fee payable must be returned to the Court within 14 days, failure to do so may result in your claim being struck out.

Pre-hearing

In the weeks before the hearing the **Judge will give directions as to how to prepare for the hearing**. The directions will usually be for both parties to file with the Court and serve on the other side all documents which they intend to rely upon at the hearing, 14 days before the hearing at the latest.

The Judge will also direct that the Court must receive the **hearing fee payable from you 14 days before the hearing at the latest**, if the fee is not received your claim will be struck out.

The hearing fee will vary depending on the value of your claim:

- £0 - £300 = £25
- £300.01 - £500 = £50
- £500.01 - £1000 = £75
- £1000.01 - £1500 = £100
- £1500.01 - £3000 = £150
- £3000.01 - £5000 = £300
- For full details see: <http://www.hmCourts-service.gov.uk/infoabout/fees/index.htm>

Step 7 - The Hearing

This may be the **most nerve-racking part** of making a claim for many people. However, the **small claims track is designed for people to represent themselves**, although you may have anyone represent you as a 'Lay Representative' provided you are present at the hearing. The **Judge will be aware** that you are **not legally trained** and that you may be **nervous**, he/she will **lead the proceedings** and try to **give as much support as appropriate**.

Although small claims are less formal than other hearings they are still quite formal and may feel comparable to a job interview. The hearing is technically in open Court but they will often be held in the Judge's chambers or any other rooms available.

The room normally contains a large table with the Judge at the head. The general etiquette is that the Claimant and the Claimant's witnesses will sit on the right hand side of the Judge with the Defendant on the left hand side of the Judge. You may take notes during the hearing but permission should be sought in advance if you wish to make a recording of it.

If you are unrepresented the **Judge will offer directions** as to where to sit and **how to proceed** throughout the hearing and should be addressed as Sir/Madam.

The Judge will begin by taking a note of who is present and the hearing will generally proceed as follows:

1. The Claimant sets out their claim and Claimant's witnesses (if any) are heard.
2. The Defendant sets out their defence and the Defendant's witnesses (if any) are heard.
3. The Claimant closes their case
4. The Defendant closes their case
5. The Judge will sum up the case and deliver his judgment.
6. Both Claimant and Defendant make their case for the costs to be awarded.
7. The Judge will make a costs order (usually in favour of the successful party).

Once the hearing has concluded you will receive a paper copy of the judgment from the Court office by post.

You have the right to appeal the judgment within 14 days of receiving the notice of judgment. However, the grounds for appeal are very limited and legal advice should be sought before making an application for an appeal.

Step 8 - Enforcing your Judgment

There are a variety of methods of enforcing your judgment against a Defendant who is reluctant to pay:

1. **Warrant of Execution** – used to instruct a County Court Bailiff (or High Court Enforcement Officer if judgment exceeds £600) to visit the Defendant's property to seize goods and possessions in order to recover the debt.
2. **Charging Order** – used to secure the judgment debt against the Defendant's property and potentially force a sale of the property in the future.
3. **Third Party Debt Order** – used to freeze the Defendant's bank account and recover any money directly from their account.
4. **Attachment of Earnings Order** – used to recover the debt directly from the Defendant's wages before they are paid by their employer.
5. **Bankruptcy/Winding up Petition** – used to make the Defendant bankrupt (if individual) or wind up a Defendant company, the judgment debt must be at least £750.

Debt Recovery

For further information on enforcing your judgment, costs and the services offered by Simpson Millar LLP Solicitors please see our Debt Recovery Section at:

<http://www.simpsonmillar.co.uk/services/debt-recovery/debt-recovery-debt-collectors.aspx>

This guide contains information on current legal issues applicable at the time of printing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:

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