

Small Claims Court Fact Sheet for a matter other than Personal Injury

The County Court and Small Claims Track

The small claims court provides a simple but legal way of resolving disputes with traders and individuals without using a solicitor. This factsheet will explain the procedure to make a small claim for a matter other than a **personal injury** claim.

The types of problems that are likely to be allocated to the small claims track are:

- problems with faulty or poor quality goods
- problems with services
- breach of contract
- rent arrears
- damage to property
- claiming back money that is owed to you by someone

The person taking legal action is known as the 'claimant', the person the claimant is suing is known as the 'defendant'.

Things to Consider

Many industries, such as banks or telecommunications, have a formal complaints procedure that you can use. Some industries even have an independent body or an ombudsman who can resolve disputes. Ombudsmen are free, independent and specialise in a certain area of law and will give you a fair judgment of your case and usually resolve the matter without you needing to take legal action.

A list of ombudsmen is provided by the British and Irish Ombudsman Association and can be found at www.bioa.org.uk. You still have the option to take legal action even if you go to the ombudsman first, however the ombudsman's decision could be used in court and is likely to be upheld.

There are also dispute resolution schemes, trade associations, and mediation services available which can help you resolve the matter without taking legal action.

It is also important to consider whether it is financially worth taking legal action against someone. If the other party is unlikely to be able to pay or unwilling to do so, there may be little point in taking legal action as you will have to pay court fees. You should search the Insolvency Register and/or look at Companies House to see if the defendant is bankrupt / has ceased trading prior to taking legal action.

You can search the Insolvency Register online at www.bis.gov.uk/insolvency and search for details about a company with Companies House at www.companieshouse.gov.uk.

Criteria for Small Claims

Your claim normally must be worth under £5000 (including any added interest) to be allocated to the small claims track. Even if your claim is worth less than £5000 it may not go to the small claims track if it is too complex.

The Limitation Act 1980 sets time limits on taking claims to court. Usually you will have six years in which to take legal action.

Starting your Small Claim

The courts expect you to follow a reasonable procedure before taking legal action. Failure to follow this could result in financial penalties. The reasonable procedure includes:

- making a formal complaint
- contacting an ombudsman or trade association (if applicable)
- attempting to conduct negotiations

If negotiations have failed, you will need to write a final letter to the defendant detailing your complaint and asking them to put it right within 14 days. You need to explain in this letter that if the defendant does not do this, you will take action in the County Court.

If the defendant does not follow your instructions by the end of the 14 days, you will need to obtain and fill in the claim form (N1). You need to fill in three copies, one for the defendant and one for the court. Claim forms can be obtained from your local County Court or downloaded from the court-service website at hmctscourtfinder.justice.gov.uk.

You can also issue your claim online using the online court service website at www.moneyclaim.gov.uk. It is slightly easier and cheaper to issue your claim using the online service. The process is exactly the same regardless of whether you make a claim online or at the court. However, from the 19th March 2012 all claims will have to be issued through the online claims procedure or, through the County Court Money Claims Centre (CCMCC).

If you choose to follow the online claims procedure, everything is explained for you online. You will not need to follow the same CCMCC procedure.

Issuing a Claim After 19th March 2012

From the 19th March 2012 all claims must be issued online or through the County Court Money Claims Centre (CCMCC) in Salford instead of your local county court. Contact details for the CCMCC can be found at the end of this factsheet.

Whether you file your claim online or through the CCMCC, you will need to fill out an N1 claim form. You will need to complete 3 copies of the N1 form if you are submitting your claim through the CCMCC, one for yourself (which you should keep), and send two to the CCMCC for the defendant and the Court. The CCMCC will then send your N1 claim form to the defendant.

The online money claims service will automatically make copies of your claim form. You do not need to create multiple claims.

The claim form asks for your name and address, the name and address of the trader or person being sued, brief details of the claim and the value of the claim. The claim form asks for the claimant to sign a statement of truth.

Whilst all claims are either processed in the CCMCC in Salford, or in Northampton via the online claims procedure, it will most likely not be heard in either of those two locations. It is important that you clearly state which court you would prefer the court to be heard in, in the 'preferred court' section of the N1 claim form. If your claim is defended it will be transferred to an appropriate county court, depending on both party's circumstances and the reasons stated on your claim form.

You can also claim interest from the defendant. Some written contracts include terms relating to interest. If there is no such term, the interest rate is set at 8% per annum under section 69 County Courts act 1984 and calculated on a daily basis. If you want to claim interest you must say so on the claim form.

You must post your N1 claim form (plus extra copies for each defendant and the court) to the CCMCC along with the appropriate issue fee. You must also keep a copy yourself. If you issued your claim online you will not need to send copies or keep a copy yourself as the online claims procedure will do this for you automatically.

Further guidance on how to fill out an N1 claim form are contained in form N1A which can be downloaded from the court-service website at <http://hmctscourtfinder.justice.gov.uk/HMCTS/FormFinder.do>.

You will also need to send all subsequent documents, such as the allocation questionnaire (which is explained later on) to the CCMCC.

Fees and Costs (from April 2011)

When you make a claim you will have to pay an issue fee. The fee will depend on the amount you are claiming and how you are issuing the claim. For more information, read <http://hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>.

If the claimant does not pay the correct fee when required, the court can strike out the claim.

There is also a hearing fee and an allocation fee which will be payable as your claim progresses. You will have to pay these fees unless you are on a low income, in receipt of certain income related benefits or you can show that payment of a court fee will cause hardship to you and your family, the court may waive the fee.

To apply for a fee exemption or reduced fees you should fill out an EX160 form each time a fee is payable.

What Happens Next?

The court will send you a notice of issue (form N205) which shows the claim number, and the date by which the defendant has to respond to the claim by. The court will also post the claim form to the defendant.

The defendant has a number of options. S/he may want to:

- admit all of the claim.
- ignore the claim form.
- admit part of the claim.
- deny the claim altogether.
- wish to make a counterclaim.
- negotiate with the claimant out of court.

The defendant has 14 days after the date of service of the claim form to respond, which is deemed to be the second day after the day of posting.

If the defendant defends the claim, the court will send you a copy of the defence and an allocation questionnaire (form N150). This form will ask you various questions which the court will need in order to decide where the case is heard and when.

Once you return your allocation questionnaire, you will be notified if the claim has been allocated to the small claims track on form N157. This form will include the time, place and date of the hearing and what you have to do next.

You will also have to pay a hearing fee, how much will depend on the value of your claim. For more information, read hmctscourtfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf.

Preparation

The court will give you 'directions' to follow telling you what they want you to do in preparation for the final hearing. Failure to follow directions can result in you being liable for further costs and/or the case being dismissed.

Usually the court will direct you to send all relevant evidence that you will use to support your claim, to both the defendant and the court by a certain date. You will not be able to use any evidence sent to the defendant and the court after the deadline has passed.

Expert reports can be used to help support your claim, but you will need the courts permission to summon an expert to give oral evidence. Therefore, it is recommended to get a written report from your expert to be included as your evidence rather than bringing an expert to court. If an expert opinion is vital to your case it is advisable to seek further legal advice.

On the actual hearing day it may be helpful to write down your main argument to take with you to the hearing. You can take someone with you to the hearing if you do not want to represent yourself. You are not advised to instruct a solicitor for a small claim, but you can ask a family member, a friend or a trade union representative to represent you.

The Hearing

Once the Judge receives your allocation questionnaire s/he will set a hearing date and time when you will be required to attend court and state your case. You have the opportunity to say if you are unavailable to attend court on certain days in the allocation questionnaire so the Judge will know not to set a hearing date on those days.

You do not have to attend the hearing and can ask that the case is heard in your absence but this may affect your chance of success. You must notify the court and the defendant in writing if you will not be attending no later than 7 days before the hearing date.

If you cannot attend the hearing for an unforeseen reason, you can apply to the Judge to 'adjourn' the hearing for a later date. You may have to pay a fee for this. The earlier you make an application the more likely your application will be granted. If you do not attend the hearing and fail to apply for an adjournment, it is likely that your claim will be unsuccessful and you will not be able to claim your costs back.

Occasionally, the court can order that no hearing is necessary as the matter can be dealt with on the written evidence alone. This is rare and you can appeal this decision.

The hearing itself will be informal. You and the defendant will be called into a meeting room with the Judge who will have already seen your evidence and claim form so will know a lot about your claim. S/He will ask both parties questions about the case and ask you to wait outside whilst s/he makes his/her judgment.

The Judge will not be wearing a gown or wig, you do not have to stand in a dock to give evidence and you will not be made to swear an oath of truth.

Once the Judge has made his/her decision s/he will call you back into the room and inform you of it. You will then receive a 'judgment order' through the post.

If you are successful, the Judge will make an order requiring the defendant to pay you. The Judge can ask the defendant to pay either by instalments or in full by a certain date.

If you are unsuccessful you will not be able to recover your court fees and costs. You can appeal the decision but you only have 21 days in which to do so.

Costs

If you are successful, you can ask the Judge to award you 'costs' to reimburse you for any financial loss you have suffered to attend the hearing. However, if you are unsuccessful the defendant can ask for his/her costs as well!

These 'costs' include:

- any court fees paid;
- an amount of not more than £50 per day each for the party, and any witnesses for loss of earnings due to attending the court hearing
- costs for use of an expert up to a maximum of £200;
- the party's own and any witnesses' expenses in attending court, for example, fares and accommodation;
- any costs ordered by the Judge if one of the parties behaved in an unreasonable way.

Costs will not be awarded by the court unless the successful party asks for them at the time the judgment is made in the hearing. If there has not been a hearing, the successful party will need to write to the court asking for costs. You will be expected to prove your costs so it is wise to keep any travel tickets, hotel invoices in case the Judge wants to see them. However if you have had the opportunity to settle this out of court, for example through an ombudsman or negotiations, and you didn't, the court may not award you costs, even if you are successful.

Enforcement

If the defendant fails to pay the amount, you will need to 'enforce' the judgment. There are several different types of enforcement the most popular are:

- a warrant of execution (sending bailiffs)
- an attachment of earnings order
- a third party debt order
- a charging order
- a bankruptcy order (if the claim is for more than £750)

You can also apply for an 'order to obtain information from a debtor' to bring the defendant to court so that their financial circumstances can be examined. This could help you decide whether it is worth taking further enforcement action. There will be a further court fee to take enforcement action, how much will depend on the method of enforcement.

For more information about enforcement please see the guidance form EX321 "I have a judgment but the defendant hasn't paid – What do I do?" on the court service website at http://hmcts.courtfinder.justice.gov.uk/courtfinder/forms/ex321_e.pdf.

Appeals

If your claim is unsuccessful and you want to appeal, you can do so only with the permission of the court. You can ask for permission at the end of the hearing when the judgment is made.

You must have a good reason to, you cannot appeal on the basis that you simply disagree with the Judge's decision. Permission to appeal will only be given where the court considers that an appeal 'would have a real prospect of success or that there is some other compelling reasons why the appeal should be heard'.

The time limit for asking for permission to appeal is 21 days from the date of the decision being appealed. You should seek legal advice if you intend to appeal.

Further Information

You can also find other [Thompsons Solicitors' fact sheets](#) on a variety of legal issues, including taking action about [poor service](#) and [faulty goods](#) on our website.

The contact Details for CCMCC are:

CCMCC Salford Business Centre
PO BOX 527
Salford
M5 0BY

For phone enquires: 0300 1231372 (from the 19th March 2012)

THIS FACT SHEET IS INTENDED AS A GENERAL STATEMENT OF THE LAW AND DOES NOT PURPORT TO RENDER SPECIFIC ADVICE, LEGAL OR OTHERWISE, SPECIFIC ADVICE ON A PARTICULAR PROBLEM SHOULD ALWAYS BE SOUGHT.

Last updated April 2012 CC