

Small Claims Court Fact Sheet for a Consumer Problem

How To Use The Small Claims Court

What can I use the small claims court for?

The small claims track of the County Court allows you to resolve straightforward disputes without using a solicitor. You can usually use it if your claim is worth less than £5000, unless it is for **personal injury**, in which case the limit is £1000. Very complex claims that are worth less than £5000 are sometimes excluded from the small claims court if the judge feels that the case is too involved for the small claims procedure.

Step One: Be aware of time limits.

There are strict time limits for taking legal action. Claims for personal injury must normally be made within 3 years of the date of the accident whilst most consumer problems have a 6 year time limit. Some types of claims have very short time limits, so make sure that you take **legal advice** about your problem.

Step Two: Take advantage of free sources of legal advice.

You may justifiably believe that your builder, neighbour, or local department store has behaved in an upsetting or unreasonable way. This does not mean that you have a valid legal claim against them.

Fortunately, there are plenty of sources of free legal help around so you can make sure that you have a chance of winning your case, before spending money on legal action.

Many **trade unions** have free half hour initial legal advice schemes for members. If you are not in a union you could try one of the following:

- Citizens Advice Bureau
- Consumer Direct
- Community Legal Advice

Step three: Ask yourself if you really need to go to court?

There are plenty of free ways of sorting out disputes without resorting to court action. You could find out whether the organisation you are in dispute with has a scheme to help with this.

Association of Manufacturers of Domestic Appliances
Association of Art and Antique Dealers (LAPADA)
Carpet Foundation
Furniture Ombudsman - E-mail: info@thefurnitureombudsman.org
Association of Garage Door Specialists
British Audio-Visual Dealers Association
The Glazing and Glass Federation
The National Guild of Removes and Storers
British Horological Institute (Watch and Clock repairers)
Domestic Appliance Service Association
Garden Centre Association
Guild of Master Craftsmen
Hairdressing Council
Independent Footwear Retailers Association (IFRA)
Kitchen Bathroom Bedroom Specialists Association
National Carpet Cleaners Association
British Institute and Association of Electrolysis
Association of British Introduction Agencies
The Financial Ombudsman Services (deals with complaints against bank, insurance or finance company)
British Institute of Professional Photography (BIPP) (deals with complaints against photographers (if they are members))
Master Photographers' Association

Neighbour Disputes

If you use the courts to sue your neighbour, you may have to reveal this fact when you come to sell your property. You could consider using a local community mediation service instead. Your local authority will have information about whether this service is available locally.

Beware of taking legal action against anyone or any company that is in financial difficulties. It can be notoriously difficult to get them to pay you, even if you have a judgment against them.

Step 4: Give them one last chance.

Send one last letter giving the other party a chance to resolve things without going to court.

Write to the person or organisation that you are in dispute with, telling them what you want and warning them that if you hear nothing from them, you will have no option other than to start a court action within 7 days of the date of the letter.

Step 5: Making your claim in the County Court

If you do not have a satisfactory reply, you may then start your claim. You will need to complete a claim form setting out the details of your claim. A copy of the claim form and details of how to fill it in can be found at : www.hmcourts-service.gov.uk

The completed claim form should be taken to the courts either in person or by recorded delivery. There is also an option to fill it in on line (www.hmcourts-service.gov.uk). The relevant fee should also be paid. The fee depends on the value of the claim. It can be waived in certain circumstances.

The case is likely to be heard in the County Court nearest to where the person you are suing (the defendant), lives. You may be able to apply to have the case transferred but there is no guarantee this will be successful.

The court will usually post the claim form to the defendant. If the claim form is returned undelivered, the court will tell you and you must then take responsibility for serving it.

Step six: Dealing with the defence (or lack of it).

The defendant has a number of options. They may :-

- admit all of the claim
- ignore the claim form
- admit part of the claim
- deny the claim altogether
- attempt to negotiate with you

They will have 14 days after the date of service of the claim form to respond to you, which is deemed to be the second day after the day of posting.

What happened if the claim is defended?

If the defendant defends the claim, the court will send you a copy of the defence along with an allocation questionnaire which you will need to fill in and return to the court. The court uses the questionnaire to decide how to deal with your claim. Low value claims which are straight forward are allocated to the **small claims track**.

You will be notified if the claim has been allocated to the small claims track. This form will include the time, place and date of the hearing and what the claimant has to do next.

If your claim is allocated to any other track of the county court you should seek **legal advice**.

If you are successful, the judge will make an order requiring the defendant to pay. This is a judgment. At the end of the hearing, you should ask the court to include the costs in the order. The amount of costs that can be claimed in a small claims case does not usually include solicitors' fees.

The judge can ask them to pay you immediately, by instalments or in full by a certain date. If they fail to pay the amount, you can ask for enforcement of the judgment. Examples of enforcement include bailiffs, third party debt orders which order someone else who owes the debtor money to pay it to you instead of the debtor and orders which attach the debt to the debtor's property (charging orders). **Legal advice** should be taken before starting any enforcement action.

There will be a further fee to get the judgment enforced and the amount will depend on the method of enforcement. The fee may be waived in certain circumstances. More information about the procedure for enforcing a court judgment can be found at www.hmcourts-service.gov.uk

What happens if they ignore my claim form?

Once the Defendant has received the proceedings (2 days after you sent it to them), they have 14 days to send you a Defence in which they set out why they think that they do not have to pay you any money. If they file what is called an Acknowledgment of Service with the court they will have 28 days to send you a defence from the time they received the proceedings. The court will tell you if they do this.

If they do not do either of the above, you must ask the court to enter judgment on your behalf. The court will have sent you a Notice of Issue when you started proceedings simply confirming that fact. At the bottom of that form is a standard form entitled "Request for Judgment". Fill this in and send it to the court. If judgment is entered against the defendant, the court will list the case for a hearing and the procedure will be the same as if they had agreed that you were owed money.

What if they attempt to negotiate with me?

It is important to continue to be reasonable and consider any offers which are made to resolve the dispute. If you are unsure whether or not to accept an offer, seek **legal advice**.

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

INFORMATION CORRECT AS OF 07/08/2008

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