

Trading Standards



THINKING OF SUING IN THE SMALL CLAIMS COURT?

This is a brief overview of the small claims track of the County Court, for claims up to £5000. There is also guidance on what you must think about before making your claim.

If after reading this you decide to make your claim, please contact your local County Court and ask them for comprehensive guidance leaflets and the appropriate forms.

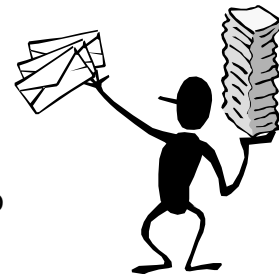
HOW IT WORKS

The procedure can be quite simple, but you may be put off by the terminology such as claimant (person suing) or defendant (person being sued) or perhaps by the forms you need to complete. This leaflet tries to offer some general advice to make your claim easier.

COURT SHOULD ALWAYS BE SEEN AS THE LAST RESORT

You must have tried every possible option available to you to resolve the problem first.

Try to keep copies of letters and notes of telephone conversations so that you can show the steps you have taken to resolve the dispute. When writing letters it is a good idea to send them 'Recorded Delivery', you can then prove that the person you are writing to, has actually received them.



DO I NEED TO USE A SOLICITOR?

No. You may represent yourself when making a claim in the County Court.

In the small claims track you would not be able to claim for the cost of a solicitor to represent you - even if you won your case. Equally, if you were to lose you would not be expected to pay the defendant's solicitor's fee.

If your claim is for more than £5000 you may feel that it is necessary to consult a solicitor before starting a claim because you may be expected to pay all the defendant's costs if you were to lose. This may be in addition to your own costs and court fees. It is very important to be aware of the financial risks of making your claim before you begin.

WHAT FORMS DO I NEED?

When making a claim for money or for the return of goods you will need to complete a claim form. You will have to get the appropriate set of instructions from the court, depending on whether you are claiming goods or money.

WHAT HAPPENS NEXT?

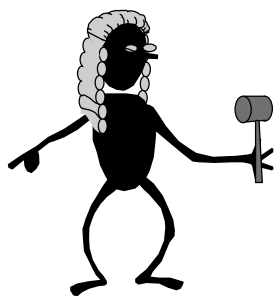
Once completed, the particulars of claim can be taken to the court, or if posted, sent recorded delivery to the Chief Clerk enclosing a self-addressed envelope. (Remember, if the forms are posted and are incorrect they may need to be amended. This will delay the process, so going in person may be best).

The fee also has to be paid, this can either be cash, cheque or postal order.

The summons is then sent to the defendant by post (usually within 7 days) and the person being sued has the right to reply within 14 days.

If the case is defended, the Court will send instructions to both parties detailing how they wish the case to proceed, and an allocation questionnaire. It is important that you follow these directions. If you do not, your case may be delayed or thrown out. This questionnaire is designed to give the judges the information they need to ensure that the claim is heard in the correct track of the County Court. It may also instruct you to do something such as get an expert's report, or exchange copies of all your documents with the other party. If your claim is more than £1000, a fee is payable at this stage.

If you hear nothing, you may be entitled to have judgement entered in default, but the procedure gets a little complicated and you should seek further advice on this.



A district judge may decide that you can make a judgement on the basis of the documents submitted thus avoiding the need for a hearing.

The district judge may decide to have a hearing, this would normally be held in the court buildings. It is possible that the district judge may decide to visit the source of the claim to enable him or her to make a decision, they may want to look at the faulty carpet or damaged furniture themselves to decide the case.

A district judge can reject a claim if he or she considers it to be unreasonable.

WHAT IF I RECEIVE A DATE FOR A HEARING?

Hearings are generally fairly informal - it is likely just to be you, the district judge and the defendant or their representative.

You should state your case from the beginning and **STICK TO THE POINT - DO NOT ELABORATE**. The judge will make his/her own notes, so pause between sentences to ensure everything is noted and nothing is missed. If you do not understand a question, say so. Remember you will probably be asked questions by the defendant - so stay calm.

You should be fully prepared beforehand, knowing the nature of the problem, the amount being claimed and have evidence to prove your claim, along with a list of expenses incurred (with proof such as receipts) in bringing the case to court. However, costs will not be awarded unless asked for and may sometimes be awarded against you if the judge believes you to have been unreasonable in bringing the action.

WHAT IF THE OTHER PARTY HAS A SOLICITOR?

Remember, for claims less than £5000 the small claims track has been established to keep costs down, be accessible to everyone and to be used as a friendly, informative court. Therefore, a solicitor (if present), will not be allowed to subject the other side to legal jargon if they are not represented. The judge will try to balance both sides as evenly as possible.

WHAT HAPPENS AFTER THE HEARING?

At the end of the case, the district judge will decide on judgement, known as an award, which is binding on both parties.

The successful party has to ask for judgement to be entered before the claim is to be paid. However, the other party may not 'pay up' so you may have to try and enforce this judgement, which can be very difficult, time consuming and costly. You should therefore seek advice on this procedure before commencing.

NOW I KNOW HOW IT WORKS, WHAT ELSE DO I NEED TO KNOW?

Points to consider before starting.

You will need to ask yourself:

- **Have I got legal grounds to sue?** To make a claim you must be able to identify a breach of civil or criminal law. If you cannot do this your claim will not be allowed to continue
- **Am I in time?** There are time limits on making claims
- **Is my claim reasonable?** It's no good trying to claim £5000 if the zip of a £50 jacket broke after 6 months
- **Will the defendant pay up if I win?** This is very important - if you feel that the person you are suing will be determined not to pay or has no money, the judge cannot make them pay. You may have to take further court action to enforce the judgement. Think very carefully before throwing good money after bad.
- **Can you prove your claim?** Do you have any evidence such as photographs, receipts, witnesses etc. In some instances it will just come down to one person's word against another, and the district judge will have to decide where the liabilities lie, based on who has the best evidence.



Remember, in civil proceedings you do not have to prove your claim 'beyond reasonable doubt' as you would in a criminal prosecution. The burden would be on you, the claimant, to prove your case on a 'balance of probabilities' ie at least 51% in your favour.

- **How much to claim?** This should be proportional to the source of the claim, eg. if a car is not properly repaired and breaks down as a result, your claim is likely to be for the cost of putting it right. You may also be able to claim for out of pocket expenses, which have arisen as a direct result of this breach, such as extra phone calls, letters, extra travel and if appropriate the cost of transporting the vehicle to a repairer.

In some circumstances you may be able to claim extra money for the 'distress' caused by the action of the defendant. You may also be able to claim extra money if you have not been able to use the goods as expected.

Remember - the small claims track will only deal with claims up to £5000. If your claim is just over this amount you may wish to consider limiting your claim to £5000 to avoid the possibility of having legal costs awarded against you if you were to lose.

Interest can be claimed from the date of the fault/problem, to the date of issue of summons. This needs to be specifically claimed on the summons form. The judge will not award it afterwards. This can be complicated, so you should seek further advice on this.

- **Who do I sue?** If you make a claim against the wrong person, your case will be thrown out and you may have to start again.

THERE ARE DIFFERENT TYPES OF BUSINESS

- If you are suing a Limited company eg. 'Got your money PLC' or 'Got your money LTD' you can use the company name on your receipt/invoice and send the summons to their trading address or their registered office address.

If the person you are suing is a sole trader, it is best to sue the owner of the business as he or she is personally liable for the business debts. The summons is sent to the trader at either their home or business address. Send it to 'Mr XXXX Trading as Badduns'.

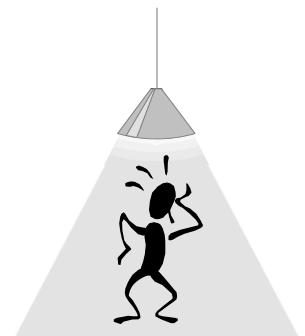
If the business is a partnership it is best to sue all the partners who are liable - as the partners, like sole traders are responsible for their business debts. Address the letters as you would a sole trader. You cannot first sue one partner and then if they cannot pay sue another.

EXPERT WITNESSES

In the small claims track the judge will try to keep the costs down. Expert witnesses add greatly to the costs of court action.

The role of the expert witness in court proceedings should be to provide information for the judge and this will be their principal duty. Their obligation is to the court NOT to the person paying their bill.

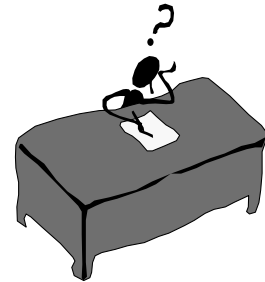
In the early stages of preparing a claim, try not to use an expert. If you feel one is necessary or could help in resolving your dispute, contact the defendant and ask if you could both use the same expert. Try to agree to be bound by their decision and if possible share the cost.



In many instances the district judge will feel competent to decide the case without an expert. If they feel it is necessary they will appoint ONE. This is to avoid the situation where both sides have experts working for them, arguing the case and increasing the length and cost of the case.

HOW DO I COMPLETE THE FORM?

- Keep the details brief
- First of all Set the Scene - Who, what, where, when, cost
- Then - Problem - What went wrong?
- Action - What was done to resolve the dispute?
- Law - State the legal grounds for your claim
- Money - State clearly how much you want to claim and how you arrived at that amount
- Try to type the details if you can. If this is not possible use black pen
- Keep details SHORT, CONCISE and ACCURATE



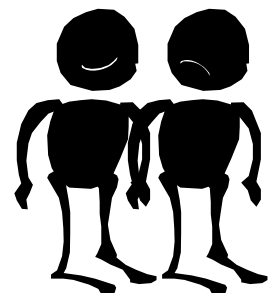
If any point needs a detailed explanation it is a good idea to put this onto a separate piece of paper and attach it to the form. If you have had a lot of contact with the defendant, it is a good idea to set this out in a list and attach it to the form. In both instances it is essential that these documents are referred to in the summons, otherwise they will not be considered.

You will need an original form and all attached documents to be sent to each of the parties being sued, a copy for the court and a copy for yourself.

Remember - your local County Court will have copies of forms and full explanation notes on how to complete them. Their address can be found in the local telephone directory or on www.courtservice.gov.uk.

WHAT SHALL I BRING TO THE HEARING?

- **Be prepared** - bring all your original documents - in date order. Make sure that any witness you want to call, comes to court with you. It is important that they attend IN PERSON.
- **Be prepared** - write down what you want to say - if you think it might help, take a friend or adviser with you. Or use them to present your case to the judge, if you think they can do it better than you.



Trading Standards Website: www.tradingstandards.gov.uk/kent

For further consumer advice please call Consumer Direct on the local rate number given below

08454 04 05 06

