

Making a claim? - Some questions to ask yourself

This leaflet suggests some questions you ought to ask yourself before making a claim (called 'issuing a claim') in a county court. The answers to the questions will help you decide if going to court is going to be worthwhile for you.

Do I have to make a claim? Are there any alternatives to court?

Until recently, if you had a legal problem, you would normally have gone to a court or tribunal in what is often called 'litigation'. While this is still a common way of sorting out such problems, individuals often find that going to court is expensive and can be stressful.

There are now a number of other ways of sorting out complaints and legal problems, including things like arbitration, mediation and ombudsmen schemes. These are often called 'alternative dispute resolution' (ADR) schemes.

Court rules require you to think about whether alternative dispute resolution is a better way to reach an agreement before going to court. If you refuse to consider this, you may not get your costs back, or the court may order you to pay the other party's costs, even if you win the case.

You may find it helpful to read information leaflet 23 Alternatives to court, published by the Community Legal Service, which explains these schemes in more detail, how they work and when you can use them. A copy of the leaflet can be obtained free from www.legalservices.gov.uk or viewed on the Internet at www.clsdirect.org.uk

Why should I use an alternative dispute resolution scheme instead of going to court?

Alternative schemes are not meant to replace the courts. But they can have advantages over going to court. The advantages include:

- being more flexible;
- solving your problem faster;
- being less stressful; and
- costing you less money.

If you have a problem with a person regularly (a neighbour for example) or organisation you deal with, an alternative process such as mediation could mean a better, longer-lasting solution to your problem.

You can find out more about mediation by contacting the National Mediation Helpline on 0845 60 30 809 or by visiting the website www.nationalmediationhelpline.com

How do I decide whether to use an alternative dispute resolution scheme?

How you choose to solve your problem depends on:

- the result you want;
- what you can expect to achieve;
- how you want to go about solving your problem; and
- how willing the other party is to try and solve the problem.

By going to court, you might get:

- an order that something be done or stopped;
- compensation; or
- a judgment from the court about who is right and who is wrong.

By using alternative dispute resolution, you might get:

- an agreement over a debt
- a change in the way a person or organisation behaves;
- a promise that a person or company won't do something;
- getting something you own fixed;
- getting something you own replaced;
- an apology;
- an explanation for what happened to you;
- a mistake corrected; or
- compensation (for example, for an injury).

If having read information leaflet 23 from the Community Legal Service (see above), you think that your case would be better dealt with by a court, read on.

Why go to court?

If you are unable to settle your dispute any other way, you may decide to issue a claim through the county court. If you have access to the internet you can visit www.moneyclaim.gov.uk for a simple, convenient and secure way of making a claim. You can issue claims for a variety of reasons, including:

- someone owing you money;
- bad workmanship;
- damage to property;
- road traffic accidents;
- personal injury;
- goods not supplied; and
- faulty goods.

County courts deal with all these types of claim. You will sometimes hear people talk about the 'small claims court'. What they really mean is the special procedure for handling smaller claims in a county court.

The system for handling smaller claims in the 'small claims track', is designed to be quick, cheap and easy to use. But it will usually only apply to claims for £5,000 or less (or £1,000 or less if the claim is for personal injury or housing disrepair), against a person, firm or company in England and Wales. Courts in Scotland have their own legal system.

Claims of more than £5,000 are generally dealt with differently in either the 'fast track' or the 'multi-track'.

Leaflets which explain more about the allocation of claims to the small claims track, the fast track and the multi-track and how they are handled, are available free from any county court office or from our website www.hmcourts-service.gov.uk

If I decide to go to court, should I still try to settle the claim?

Even though you might choose to go to court rather than use an alternative dispute resolution process (see above), issuing a claim should always be your last resort. The court will expect you to have acted reasonably, such as by exchanging information and relevant documents about the dispute and to generally try to avoid the need for making a claim. For example, if you are owed money, you could write a letter to the person who owes it. Say how much they owe and what it is for, and what steps you have already taken to recover the money. Include a warning that you will issue a county court claim if they do not pay by the date you give. Sometimes this warning will encourage them to pay and you will not have to go to court. Keep a copy of your letter and any reply.

This is an example of the sort of letter you might send.

2 Spring Gardens Anytown AO6 3BX	11 April 2005
Dear Mr Green,	
You came to repair my central heating boiler on 6 January. I rang you on 7 January and again on 10 January to tell you it was still not working properly.	
You promised to call and put it right but did not. I had to get someone else to come and repair it on 26 January which cost £157 + VAT.	
I asked you on 2 February to pay this money because it was work you should have done.	
You have not paid it.	
If you do not pay me the money by 19 April 2005, I will issue a county court claim against you.	
Yours sincerely	
Mrs V Cross	

What are pre-action protocols?

There are a number of disputes including personal injury, disease or illness, professional negligence, housing disrepair, defamation or construction and engineering, where court rules tell you about what steps you should take before you issue a claim. These are called 'pre-action protocols'. You can find out more about these protocols on the Department for Constitutional Affairs website www.dca.gov.uk/civil/procrules_fin/menus/protocol.htm.

Will I get my money?

It is important to consider whether the person, firm or company you are claiming from is likely to be able to pay. If they are:

- unemployed;
- bankrupt;
- have no money of their own;
- have no personal property and have nothing else of value belonging to them (such as a car) which is not hired or subject to a hire purchase or lease agreement;
- have ceased to trade; or
- have other debts to pay,

the court may not be able to help you get your money. However, you may be able to get your money if you are prepared to accept small instalments over a period of time.

If the person or company is bankrupt, you will probably not get your money. You can contact the Insolvency Service at 21 Bloomsbury Street, London WC1B 3SS (telephone: 020 7637 1110). You need to tell them the full name of the person or company and their last address. They will tell you if the person is bankrupt, or if the company is in 'compulsory liquidation', which means that the company has stopped trading and probably has neither money nor other assets.

If the person you are claiming from has already been taken to court by others, and has not paid, you may also have little chance of getting your money. You can find out if a person, firm or company at a particular address has any unpaid court orders (called 'judgments'), by writing to Registry Trust Ltd, at 173 - 175 Cleveland Street, London W1T 6QR (telephone: 020 7380 0133) or by visiting www.registry-trust.org.uk. You will have to pay a fee to search for each name you are interested in.

A search of the Register of Judgments, Orders and Fines will be made for you. You will be told the result of the search.

Remember, even if you win your case, the court does not guarantee that you will be able to get the money you are owed.

Can I afford to go to court?

You will usually need to pay a fee to start your claim. The level of the fee will depend on the amount you are claiming. If the defendant does not pay once you have judgment, or says the money is not owed and your claim proceeds as a 'defended' (disputed) case, you may have to pay further fees. If you win your case, the fees may be added to the amount the defendant owes you. You may also be allowed some costs to compensate you for time lost at work. But this will not necessarily cover the total amount you have lost.

In certain circumstances, for example, if you are receiving income support, you may be able to ask for an exemption from paying fees. Ask at any county court for a free copy of the Fees Leaflet, which will give you more information.

What other expenses are there?

If the person you are suing (the 'defendant') defends your claim, you may need witnesses to help tell the court what happened. You may have to pay their costs, that is, their travelling expenses to and from the court and the money they would have earned that day; although, if you win, the court may tell the defendant to pay towards those expenses.

You may also need to obtain a report from an expert, for example, a doctor, mechanic or surveyor. You may also need to ask this expert to come to a court hearing to give evidence on your behalf. You will have to pay experts' expenses and charges. But, if you win, the court may tell the defendant to pay towards these.

If your claim is for a fixed amount of money (a 'specified amount'), and the defendant is an individual who defends your claim, your claim may be transferred to the defendant's local court. This may mean you having to travel some distance for any hearing which takes place. But, if you win the case, you may be able to claim your travel costs and something towards your lost earnings for that day.

If English is not your first language and you need an interpreter, the court will not be able to help you find one. You will have to do this yourself and also have to pay any fees the interpreter charges.

If you have a solicitor and your claim is for less than £5,000, you will usually have to pay for his or her help yourself, even if you win your case.

Enforcing a judgment You should also bear in mind that although the court may make a judgment in your favour (this means ordering the defendant to pay you), the court **will not** automatically take steps to make sure that the money is paid. If the defendant does not pay, you will need to ask the court to take action (called 'enforcing your judgment'), for which you may have to pay another fee.

Information about enforcement is available in a series of leaflets which you can get from any county court, or by visiting www.hmccourts-service.gov.uk

Can I afford the time?

Many cases are not defended and the way in which claims for money (especially amounts of £5,000 or less) are dealt with is designed to allow you to do this yourself, with no, or only one, attendance at court. But bear in mind that if your claim is defended you will need to take time to prepare your case. For example, you will have to put together copies of all relevant documents or spend time getting statements from witnesses. You will probably be required to go to a court hearing and, even if you win the case, you may have to spend more time completing forms to enforce your judgment.

Will I need a solicitor?

As a general rule, if your claim is for a sum over £5,000 and particularly if it includes a claim for compensation ('damages'), it is advisable to seek the advice of a solicitor. In a simple case for debt, for example, you may not consider it necessary to consult a solicitor.

Also, if the amount you are claiming is £5,000 or less and is defended, you may take someone to the court hearing to speak on your behalf. This person is called a 'lay representative' and may be a spouse, relative, friend or an advice worker.

Other types of claims, for example, personal injury claims, can be more complicated and it may be preferable to get some professional help and advice no matter what the value of your claim is.

Remember that you also have to prove your claim. To do this you will need to have some understanding of legal basis for your claim and court procedures and provide evidence, for example, a report from a doctor, or statements from witnesses who saw your accident. You will also need to make a realistic assessment of the amount of damages you are seeking. It may save you time and money to first ask a solicitor or advice worker if it is worth your making a claim and, if it is, how best to prepare it, what evidence you need and what amount of damages to ask for.

If you are claiming on behalf of a limited company you may need a solicitor to go to the hearing for you. This will depend on how much money you are claiming and the type of hearing.

Issuing a claim online

If the value of your claim is less than £100,000 and the claim is against not more than two people, you can issue your claim online. Log onto www.moneyclaim.gov.uk for more information.

Further help and advice

There are other leaflets in this series which are designed to help you if you do decide to issue a claim. However, they can only give you a general idea of what is likely to happen. They cannot explain everything about court rules, costs and procedures, which may affect different types of claim in different ways.

Court staff can advise you on court procedures, give you the forms you need and help you fill them in. **But they cannot give you legal advice.** For example, they cannot tell you if you have a good claim or who you should be claiming from. You may be able to get free legal advice from a law centre. A Citizens Advice Bureau or consumer advice centre may also be able to help. They will also be able to tell you if you are entitled to receive legal aid.

If you decide to go ahead and start a claim, read the leaflet **EX302 - How to make a claim?**. Copies are available from any county court, or from our website www.hmcourts-service.gov.uk. The address and telephone number of your local county court are in the phone book under **Courts** or on our website.

What additional help is available for court users with a disability?

If you have a disability which makes going to court or communicating difficult, please contact the Customer Service Officer of the court concerned who may be able to help you. If the Customer Service Officer of the court cannot help you, you can contact the Disability Helpline on 0800 358 3506 between 9am and 5pm Monday to Friday. Calls to this number are free. If you are deaf or hard of hearing, you can use the Minicom service on 0191 478 1476.