

Going to court

Before you go to court

If you have been negotiating with a trader to try and resolve a consumer complaint but have not been successful, you may want to consider going to court.

You should only consider taking legal action if you have tried all other options for resolving your dispute. These could include using an **Alternative Dispute Resolution (ADR) scheme**. ADR schemes are usually provided by a trade association. They use a third party, such as a mediator or an ombudsman to help you try and resolve your dispute. If you haven't made a genuine effort, the court may reduce your compensation, even if you win the case.

The court will expect that, before taking legal action, you have made a genuine effort to come to a reasonable agreement with the trader, and to avoid the need to go to court.

The court will also expect you to have written to the trader before you go to court (**letter before action**). The letter should give details of your claim. It should say that if the trader does not respond within a given period of time, legal action will be taken.

Before you go to court, you should also make sure that:

- you can afford to take legal action; *and*
- you are within the time limits within which legal action can be started for your particular case; *and*
- the trader can afford to pay you if you win.

Which court procedure will be used

All cases are started on the same claim form. Most cases start in the county court, unless your claim is for more than £25,000 (£50,000 in a personal injury case), when it may be started in the High Court. You can get a claim form free of charge from your local court, or from the Ministry of Justice website at: www.justice.gov.uk. If you are claiming a fixed amount of money, you can make the claim online. If the trader is defending the case, a judge will decide which type of court procedure (**track**) is most appropriate for your case. Most cases worth £5,000 or less will be allocated to **the small claims track**, which is dealt with by the county court. To help the judge allocate your case, you will be sent an **allocation questionnaire**. The questionnaire asks for certain information such as whether you want to call any **witnesses** and details of any **experts' evidence** you want to use. If the trader has sent in a defence against your claim, you will be sent a copy of their defence and the trader will

also be sent an allocation questionnaire. You will be given a date by which the allocation questionnaire must be returned and you may be told that you have to pay a further fee. **You must return your completed allocation questionnaire by the date that it is due or your claim may be dismissed.** You will then receive a **notice of allocation**, telling you which track your claim has been allocated to, and whether your case is to be transferred to the trader's local court.

This fact sheet only deals with cases that are allocated to the small claims track. If your case has been allocated to the fast track or the multi track, you should seek legal advice before going any further, as the costs involved may be very high.

Notice of allocation

The notice of allocation will usually include:-

- the court's decision on whether you can use an **expert**, and how many **witnesses** you can call; *and*
- **standard directions**. The **date, time** and **place** of the hearing is usually given at this stage. The directions will also tell you what you need to do next. You must follow these directions. If you don't, the case could be postponed and you could have to pay all the costs of the case. You will usually be told to send the trader (**defendant**) copies of all the documents you wish to use in evidence and to file a copy of all these papers with the court. You will be told to do this not less than 14 days before the hearing.

A preliminary hearing may be called if the judge wants to discuss issues with you before the full hearing. You must attend the preliminary hearing or let the court know if the date is inconvenient and apply to the judge for another date to be set. You may have to pay a fee for this if you have not indicated on the allocation questionnaire that you would be unavailable on this date. It is possible for the judge to make a decision on the case at the preliminary hearing. You should therefore take along any written evidence that you have, but you should not bring your witnesses to court unless the judge has given permission for this.

In some cases the judge may decide that there is no need for a full hearing, and that the claim can be dealt with on written evidence only. If the judge decides this in your case you will be sent form N159, Notice of Allocation to Small Claims Track (No Hearing). However, if either party raises objections, your claim will proceed to a full hearing.

You must keep to any time limits you are given by the court or your case may be dismissed (struck out).

The hearing

You will be given at least **21 days' notice** of the hearing date unless you and the defendant have agreed to less notice. You must have **carried out** all of the **judge's directions** before the hearing or it may be adjourned and you may be asked to pay the costs of the wasted hearing. You **must attend** the hearing or your case may be dismissed (**struck out**). If you cannot attend, you can ask for the case to be adjourned or for the court to hear the case in your absence. You must do this in writing at least 7 days before the hearing. If you do not attend, you will lose your opportunity to explain your case in person, and to question the defendant, and so are less likely to win your case.

Most small claims **hearings** are **in public** unless there are good reasons for a private hearing. You can take a **lay representative**, such as a friend, colleague or an advice worker to act on your behalf, provided that you also attend the hearing, but will have to pay their costs **even** if you are successful. If you are not using a friend or relative, you should ensure that the lay representative belongs to a professional organisation that guarantees the quality of the advice and is able to compensate you if the advice was incorrect. If you need an **interpreter**, you will have to find one yourself. If you have a **disability**, you should contact the court's Customer Service Department beforehand to ensure your needs are met. If you are deaf or hard of hearing, phone the court minicom service on 0191 478 1476.

The hearing will be **informal** and the judge will decide how the hearing is to be conducted. You will only have a **limited time** to put your case and must take any original documents with you. You should ensure that any **witnesses** or **experts** are available and **attend on time**. If there is any unnecessary delay, such as your witness turning up late, you could be asked to pay the defendant's costs.

Court order

At the end of the hearing, the judge will give the judgment (**court order**) and reasons for making the order. If you have been successful, you should ask for your **expenses** at this point. These should include experts' charges, and loss of earnings, loss of leave and travelling expenses for both you and your witnesses, (make sure you take proof of these to court with you). If the case was decided without a hearing, or if you or the defendant gave notice you would not be present, the judge will give written reasons for the judgment. A copy of this will be sent to you and the defendant together with the order. You will need to write to the court asking for your costs as soon as you receive a copy of the judgment.

The judge can order:-

- **compensation** to be paid, either as a lump sum or in instalments
- the **return of property** or **repayment of money** owed
- an order that **no payment** be made
- an order for **specific performance**, which is an order to make one party to a contract carry out their part of the contract.

The **judgment** will be **entered** by the court and can then be immediately enforced.

The trader doesn't pay

If the trader doesn't pay, you can apply to the court for an **oral examination**. The trader will then be summoned to attend court and answer questions about their financial circumstances. You will have to pay a fee, but the trader's answers will help you decide whether it is worth taking further action to enforce the judgment.

Enforcing the judgment

You can enforce your judgment by:-

- obtaining a **warrant of execution** against the trader's goods. This involves using bailiffs to seize the trader's goods, which are then sold; *or*
- applying for an **attachment of earnings order**, if the trader is an employee. The court will order the trader's employer to make deductions from the trader's pay; *or*
- applying for a **third party debt order** to obtain money from the trader's bank account or from someone else you are aware owes the trader money; *or*
- obtaining a **charging order** on the trader's home to ensure you will be paid your money when the house is sold; *or*
- joining with other customers to force the trader into **liquidation or bankruptcy**.

Other fact sheets that might be helpful

- Buying goods – your rights
- Starting court action
- Buying services – your rights
- Supplier has gone out of business
- Alternative dispute resolution

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