

Starting court action

If you have been negotiating with a trader to resolve a consumer complaint but have not been successful, you may want to consider going to court. Before taking legal action, you should make sure that you have tried all other options for resolving your dispute. You will need to answer the following questions:

Should I use alternative dispute resolution (ADR)?

ADR covers schemes that try to resolve disputes without the need for court action. Many of their decisions will be legally binding and will prevent you from taking court action except to enforce an award. If you have a problem with a trader who is a member of a trade association with an arbitration or mediation scheme, you should consider this alternative. If your dispute is over £5,000, you should discuss this option with your solicitor.

You may decide to take court action rather than using an ADR if:

- the trader is **not** a **member** of a **trade association with** a conciliation or **arbitration** scheme; *or*
- the **amount** you are claiming is **under £5,000** and will be dealt with as a small claim (see below); *or*
- you have a reluctant witness. Only a court can order a witness to attend; *or*
- there is no limit on the amount of compensation you can claim, for example in a negligence claim. An ADR may have limits on the level of payments it can award.

Can the trader afford to pay?

You are unlikely to get your money if the trader:

- is **unemployed** or on a **low income**; *or*
- is in debt and cannot afford to pay. You can find out whether the trader has other unpaid county court judgments, High Court judgments or fines by searching the online Register of Judgments, Orders and Fines at www.trustonline.org.uk; *or*
- has **no money** and owns nothing else of value.

If the trader has a very low income, you may get your money if you are prepared to accept very low payments (sometimes as little as £1 per month).

Can you afford to go to court?

Most consumer cases are heard in the **county court**. You can use the **small claims** procedure for claims of **£5,000 or less** (£1,000 or less for personal injury) against a person or company in England or Wales. If the case is defended by the trader, the court will allocate the case to one of three tracks: the small claims track; the fast track for most cases between £5,000 and £25,000 or the multi track for cases above £25,000 and those too complex to be dealt with by the lower courts.

If you are using the small claims procedure, the costs you will have to pay include:

- **court fees.** You have to pay a fee when starting your claim (the amount will depend on how much you are claiming), and further fees if the trader (the **defendant**) defends the case. If you win, these fees will be added to the amount the defendant has to pay. You may be able to get the fee waived or reduced if, for example you are on benefits such as Income Support or are on a low income; *and*
- **witness costs.** If your case is defended and you use witnesses, you may have to pay their travelling expenses and a fixed amount towards the cost of any lost earnings; *and*
- **expert's fees and expenses** if you need an expert's report to support your case. Where it is necessary to appoint an expert, this should be a **single joint expert**, whose duty is to the court rather than to either party. Before instructing an expert, you should try and agree with the other side on the **choice** of expert and that you will **both** be bound by the expert's findings. If you are able to agree, the court is likely to accept the expert's decision and you should also be able to recover the fee if your complaint is upheld (up to the limit fixed by the court). The court will only allow an expert to attend the hearing where it is absolutely necessary and will try and rely on a written report. If you don't get the court's permission before using an expert, their evidence may be disregarded and you may have to pay all their costs; *and*
- **additional travel costs** if the case is for a fixed amount of money, the defendant is an individual who defends your claim and the case is transferred to their local court.

If you **win**, the court may order the **defendant to pay** all or part of these **costs**. You may also be able to claim some other costs such as a limited amount of compensation to cover you for such things as time lost at work and the cost of telephone calls. However, you are unlikely to recover all you have paid out. You should try and take proof of any losses to the court with you. If you **lose**, you will have to **pay** the **defendant's costs**, including travelling expenses and an amount towards any lost earnings.

Do you need a solicitor?

The **small claims** track is an informal way of settling a dispute **without** using a **solicitor** and the level of costs that you will have to pay is limited (see above). If your claim is for £5,000 or less (£1,000 or less for personal injury), you will, in most cases, be **unable** to claim any of your own solicitor's costs from the other side, except a fixed amount to cover the cost of preparing your claim, if you are successful. If you lose, you will not have to pay the defendant's solicitor's costs. If you are unsure about speaking in court and your case is defended, you can ask a relative, friend or an advice worker to speak on your behalf as your **lay representative**.

You will be liable for costs if you lose your case and you are claiming **over £5,000** or making a claim for **specific performance** such as replacement or repair of faulty goods or making a claim for **negligence or personal injury** or if the case is legally complex. In these situations, you should consult a **solicitor** before starting court action.

Is there a time limit?

There are time limits within which you can start court action. These are usually 3 years for personal injury and 6 years for most other consumer issues. The time starts from the date the problem arose. If you are unsure about whether you have missed the time limit, you should consult a solicitor.

Do you have the trader's details?

You will need the full address of the individual or firm you are suing. If you are suing:

- a **limited company**, you will need to claim against the **company, not the owner(s)**. You should send the claim form to its **registered office** or to the **address of the shop** you have done business with. If you want details of the registered office, you can obtain this by telephoning Companies House on 0303 1234 500, or by looking on their website at www.companieshouse.gov.uk
- an **individual** (sole trader), you **must** name the individual you are suing and not just sue the trading name. The address for service can be either the trader's usual or last known home address or business address. If it is the last known address, you have to take reasonable steps to discover the current place of business or the last place where the trader carried out business. If you don't know the trader's name, contact Consumer Direct on 0845 404 0506, for advice
- a **partnership, each partner** is fully **liable** for any debts. You should sue all the partners at the same time, as you cannot sue them one after the other. A business should display details of the owner or partners on its headed notepaper or at its premises or be willing to provide them if asked.

Making a claim in the small claims track

Before you make a **claim**, you must write to the supplier of the goods or service giving them a specific time, such as 14 days, to correct any fault and that failing this, you will take action in the county court. This is called a '**letter before action**' and should be sent by **recorded delivery**. The court will not allow you to make a claim unless the defendant has been informed and given a chance to correct any fault before you do so. If you are still dissatisfied and wish to take court action, you will need to complete **claim form N1** which you can obtain from your local county court, or from the Ministry of Justice website at www.justice.gov.uk. You should ask for the **notes for guidance** on how to complete the form. If your claim is for a fixed amount of money less than £100,000, you may be able to complete your claim form and issue it online at www.moneyclaim.gov.uk

Completing the claim form

You will need to give the following information:

- **your name and address;** *and*
- the **name(s) and address(es) of the trader(s)** you are suing. If you are suing a limited company, you will have to say whether you are giving its registered office address. If you are suing the owners or partners of a business you will need to add '**trading as**' and give their **business name** after their names. If you are suing a **firm** you should add '**sued as a firm**' after the name of the firm; *and*

- **brief details of the claim** such as 'return of money for faulty goods' or 'compensation for breach of contract'. For more information, see fact sheets **Goods** or **Services**; *and*
- **value**, which is the **amount you are claiming**. The court fee you pay will be based on this amount. You should include any interest you are claiming (see below). You can either put the exact figure you are claiming, for example, if you are claiming back the cost of a faulty item (a '**specified amount**') or you can leave it to the court to assess damages, for example, if you are claiming compensation for a disappointing holiday (an '**unspecified amount**'). If you are leaving the court to decide the exact amount, you should state on the court form 'I expect to recover not more than £.....' This amount should not exceed £5,000 if you wish the matter to be heard in the small claims court; *and*
- **particulars of claim**. This section explains what the problem is and the steps you have taken to try to solve the problem. You can either complete this section of the form or send your particulars of claim separately within 14 days of sending the N1 form; *and*
- **statement of truth**. You will have to sign a statement of truth confirming that the facts in your claim are true.

If you need help in completing the form, your local CAB may be able to help. Although **court officers** can help you to complete your claim form, they **cannot give** you **legal advice** such as whether you have a good claim or who you should be claiming from.

Claiming interest

Unless your contract with the trader specifies the rate of interest you can claim, you should claim interest at the **statutory rate** of interest, which is currently **8%** (check with the court for the most up-to-date figure).

If your claim is for a **specified amount**, you will need to work out the interest you are owed. This is calculated from the date that the money became due until the date the claim form is submitted.

To calculate the interest, you first need to work out your daily rate of interest. Using a calculator, do the following:

0.00022 × the amount of your claim – this gives you your daily rate of interest

You then need to work out the amount of interest you are owed up to the date you issue your claim. Count how many days have passed since the money became owed to you and multiply that number by your daily rate of interest.

You must write your claim in the following way: *'The claimant claims interest under section 69 of the County Courts Act 1984 at the rate of 8% per year from (date when the money became owed to you) to (the date you are issuing the claim) of £ ... (put in the amount) and also interest at the same rate up to the date of judgment or earlier payment at a daily rate of £... (put in daily rate of interest).'*

If you are claiming an **unspecified amount**, you do not need to calculate the interest, but should include this wording after your particulars of claim: *'The claimant claims interest under section 69 of the County Courts Act 1984 at the rate of 8% per annum and continuing at the same rate up to the date of judgment or earlier payment.'*

Serving the claim

You may find it easier to **return** your **completed forms** (including photocopies) to the court **in person**, as a court officer will go through the form and may point out any irregularities.

If your claim is a money claim, you will need to issue your claim at the County Court Money Claims Centre.

You will be asked to pay a fee for starting proceedings. This will be based on the amount you are claiming but you might be able to get a reduction or waiver depending on your financial circumstances. You can find out how much the fee is from the Ministry of Justice website at: www.justice.gov.uk

When you issue proceedings, you will be given a **notice of issue (N205)**, giving your case number, which you should use whenever you contact the court. The court will **post** the **claim form** to the defendant(s) (this is called serving the claim form) and will inform you when it is served. If it is returned undelivered, you will be informed and must take responsibility for serving it.

What happens next?

The defendant will have a **limited time** in which to **reply** to your claim. This is usually 14 days after the date the claim form was served (16 days after it was posted) but it can be extended by a further 14 days if the defendant serves an acknowledgement of service stating that they intend to defend the case.

The defendant doesn't reply and you claimed a specified amount

Complete form N225 asking the court for **judgment by default**. If you started your claim online, you can use an online request form for this at www.moneyclaim.gov.uk. Obtaining judgment by default means the court will order the defendant to pay you the full amount you have claimed because no reply has been received.

You should do this as soon as the court will allow you to do so, as the court will accept the filing of a late defence if this is received before you file your request for judgment in default. You will have to complete a section stating how you want the defendant(s) to pay and will need to take their circumstances into account. You may have a better chance of being repaid if you accept payment by instalments rather than asking for the full amount immediately.

The defendant doesn't reply and you claimed a unspecified amount

Complete the **bottom** of form **N205B** (which you were given when returning your claim form), asking the court to make an order that the defendant is liable (responsible) for your claim. This is called entering judgment for an amount to be decided by the court. Your claim will be referred to a judge who will decide whether a court hearing is necessary and if any further evidence is required (giving directions). Both you and the defendant will be sent a copy of the judge's decision (order) and any other directions the judge has given. Your claim will either be allocated to the small claims track or given a hearing called a disposal hearing. At the disposal hearing, the judge will:

- give more detailed directions about, for example, the documents and evidence needed; or
- if it is a simple case, decide the amount the defendant has to pay.

The defendant defends the case

If the defendant defends the case, it will usually be allocated to the **small claims track**, provided your claim is for £5,000 or less. The court will send you and the trader **automatic directions** on how the case will be dealt with. These will include:

- what evidence you will need to produce
- time limits for when copies of your evidence must be sent to the defendant
- how many witnesses you can use.

Other fact sheets that might be helpful

- Goods
- Going to court
- Services
- Alternative dispute resolution

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This fact sheet was last updated on 23 March 2012, and is reviewed regularly. If it is some time since you obtained this fact sheet, please contact your local Citizens Advice Bureau to check if it is still correct. Or visit our website - www.adviceguide.org.uk - where you can download an up-to-date copy.