

Quick Guide 12: Bringing a Small Claim in the County Court

What is the County Court?

County courts deal exclusively with the settlement of private disputes. They do not hear criminal prosecutions but can now deal with claims of up to £25,000 (sometimes more). Larger claims tend to be dealt with in the High Court. Claims under £15,000 must be started in a county court.

The small claims track

Although the bulk of claims over £5,000 are dealt with in formal hearings in the county court, an informal 'small claims' procedure (called the "small claims track") is used when bringing claims of £5,000 and under. These are almost always heard more informally and without the need to incur the expense of instructing a solicitor.

What kind of cases can use the small claims track?

Small claims generally fall into one of two groups: disputes between the parties to an agreement or contract, and claims for compensation for damage caused by another person's wrongful act.

Examples:

1. Debts, such as the non-payment of royalties or non-payment for articles commissioned or accepted;
2. Defective goods, such as typewriters and computers;
3. Claims against people providing consumer services;
4. Claims for the return of property, such as a typescript and/or illustrations.

Steps before bringing a claim

1. What should be done before taking a case to the County Court?

It is important that you have tried to resolve the problem before recourse to law. The usual procedure would be a letter of request or warning which, if it fails to produce a positive response, should be followed by a 'letter before action' indicating that the matter must be remedied within a specified time failing which legal action will be taken. These letters should be clearly and concisely written. Too much detail is as unhelpful as too little. The letter should simply state when and how the loss, damage or debt was incurred, what steps you have already taken to recover the money owed or the amount of your loss, and the action or amount now required. Try to be objective and dispassionate. If the claim is for non-payment or arises from the sale of goods, invoice numbers should be quoted. You should retain copies of all correspondence.

As a rule you should never make any admissions in writing as to your own possible blame, or indicate that you may settle for a sum less than you are claiming. If you do include such wording it should be in separate letter marked 'without prejudice'. This will ensure that it cannot be used later in court against you.

When bringing a claim you need to be confident that the potential defendant has sufficient resources to pay the debt or damages if the claim succeeds - in some cases it may not be worth starting a legal action. The process of extracting money from an impecunious rogue is frustratingly difficult and rarely produces a satisfactory result. Note that there are time limits for bringing a claim: usually six years from the act complained of.

2. Who may bring the claim and against whom?

Almost always the person bringing the claim should be the person who has suffered the loss or damage, or the person who actually entered into the contract (the claimant). You may not normally bring an action on behalf of a relative, and likewise the Society may not bring an action on behalf of a member.

Generally the person committing the 'wrong' should be named as defendant. However, where someone is at fault in the course of his/her employment, the employer should be named as defendant. Newspapers and publishers should be named rather than the individual editors working for them.

Make sure you have the correct defendant and their name is spelt correctly, otherwise they can apply to strike out the claim. Check the name carefully against any original contract, invoice or correspondence and make a search at Companies House. You can do this free over the Internet on www.companies-house.gov.uk

3. Where should an action be brought?

You should normally bring an action either at the county court for the area in which the defendant lives or carries on business or, in the case of a company, has its registered office or, if it is more convenient, at the place where the events giving rise to your claim occurred. You can start an action in your local county court, but it is likely to be transferred to the defendant's own if a defence is filed. Your local county court will have a handbook listing all courts. County courts are also listed in the phone book under 'Courts'. You should check with the one which you think is closest, to ensure that it deals with cases from the area in question.

Postal contracts are made when an offer is accepted. If you accept a commission, the contract occurs when you post the letter. However, if you write to a company offering an article, the contract is only made when the company accepts it.

4. Can I claim interest?

Yes. Even where there is no contractual basis for claiming interest, you can claim statutory interest (currently 8%) from the date that the sum was owed to the date of the judgment. In the case of commercial contracts for the supply of goods or services - where both you and the defendant are acting in the course of a business - you may be able to claim the higher, statutory rate of interest which applies to the late payment of certain debts by virtue of the Late Payment of Commercial Debts (Interest) Act 1998.

If interest is claimed, the particulars of claim (see below) must state the basis for doing so (e.g. under the terms of a contract or as statutory interest). Where your claim is for a specified sum of money (such as a debt), the particulars of claim must also state the percentage rate at which interest is claimed, the dates from and to which it is calculated (usually, to the date when you complete the claim form), the amount due at the date of calculation, and the daily rate at which interest accrues after that date. Note that statutory

interest is not taken into account in calculating whether a claim falls under the £5,000 limit of the small claims track.

Making a claim

Procedure

You should make the court and the other party fully aware of the nature of the case you are bringing and the sums involved. The following documents should be sent to 'The Court Manager' at the court where you wish the proceedings to take place:

1. Claim form and request for issue

The first stage in bringing a claim is to complete a claim form and send it to the court with a request that it be issued. You must use the standard claim form (Form N1) which you can obtain free from any county court. You can also obtain it from the internet (www.courtservice.gov.uk/). The form should be accompanied by notes for guidance for the claimant (Form N1A) and notes for guidance for the defendant (Form N1B). The claimant's notes for guidance will help you to fill in the form.

Where the claim is one for money, the claim form must either state exactly the amount of money you are claiming or, if the claim is under £5,000 but inexact, that you expect to recover not more than £5,000.

When it receives your claim form and request for issue, the court will issue your claim and serve it on the defendant, unless you notify the court that you wish to serve it yourself. To enable the court to serve the claim, you must include the defendant's address for service in the claim form.

2. Particulars of claim

You must set out the details of your claim and the remedy sought in 'particulars of claim'. Particulars of claim can be included in or accompany the claim form. If not, then (less preferably) they must be served by you on the defendant within 14 days of the date on which the claim form was served on the defendant; and within seven days after that, a copy must be filed at court together with a certificate of service. Particulars of claim which are not included in the claim must also be verified by a statement that you believe the facts in the particulars to be true. The particulars of claim need not be worded legalistically; they should simply set out a concise but complete statement of the facts and the basis of the claim. Typing is preferable, but not essential. Numbered paragraphs are particularly useful for you and the court. You should aim to include concise details of where and how the alleged loss, damage or breach of contract occurred. The particulars of claim should also itemise each sum of money claimed, together with any interest. The defendant will see this document and the more professional it is the more likely it is that your claim will be settled. Specimen particulars of claim appear in the Appendices, pp 13-15.

3. Fee

A fee is payable for issuing the claim form, the sum being dependent on the amount you are claiming. The relevant fee can be discovered from your local county court. Any cheque or postal order should be payable to 'HM Paymaster General'. In certain circumstances you may be able to ask the court for an exemption from paying fees, for example if you are in receipt of income support.

4. Copies

At least two copies of the claim form (and particulars of claim, if attached) should be submitted, one for the court and one for each defendant. You should retain a copy yourself for use when the matter comes to court.

5. Covering letter

The claim form (and particulars of claim, unless separate), fee and copies should be accompanied by a letter to the Court Manager of the appropriate court, listing the documents which have been enclosed and asking the court to issue and serve the proceedings on the defendant. The court will notify you of the date of service.

The Claim Form

Service

The court will issue the claim form and serve it on the defendant by first class post, together with the particulars of claim (if attached) and a 'response pack' (containing forms which the defendant can use to respond to your claim). The court will send you a 'notice of issue' form (Form N205), telling you the date your claim was issued, the date it was served, and your claim number. The claim number should be quoted in any correspondence with the court. The defendant has 14 days from the date of service in which to reply to the claim form. If the particulars of claim are served separately, the defendant has 14 days from the date the particulars were served. The defendant can respond in any one of the following ways:

1. Failure to reply

If your claim is for a specified (fixed) amount of money and the defendant fails to reply to the particulars of claim, you can ask the court to enter judgment in your favour 'by default'. The notice of issue form sent to you by the court also contains the form for requesting judgment. You should decide how you want the defendant to pay the amount you have claimed, and then fill in the form. There are notes for guidance on the form to help you. Keep the top half of the form and send the rest to the court. The court will then use the information in your request to enter judgment in your favour (Form N30). Copies of Form N30 will be sent to you, the defendant and Registry Trust Limited (an organisation that records details of county court judgments).

If your claim is for an unspecified sum of money (for example, where you are claiming compensation for loss or damage) and the defendant fails to reply in the time required, you can ask the court to enter judgment for an amount to be decided by the court. You should fill in the bottom half of the notice of issue form sent to you by the court. When the completed form is received back by the court, it will be referred to a procedural judge who will enter judgment on liability and decide whether a court hearing is necessary to determine the amount you are entitled to. The court will send you a copy of the order that the judge makes.

2. Admission

If your claim is for a specified amount and the defendant admits the claim, he/she will complete an admission form (Form N9A) and send it to you. The defendant may also use the form to ask for time to pay. If this is acceptable to you, you can ask the court to enter

judgment in your favour ('entering judgment on admission') by filling in the bottom half of the notice of issue form sent to you by the court (Form N205A) and then returning it to the court. Court staff will enter judgment and send you a copy of the order (Form N30(1)). If the defendant asks for time to pay but this is unacceptable to you, you should fill in the bottom half of Form N205A setting out your objections, and send it to the court together with a copy of the defendant's admission form. Court staff will enter judgment and decide how much the defendant should pay and when (this is a 'determination'). You will be sent a copy of the order (Form N30(2)). If you object to the rate of payment set by the court officer, you must do so within 14 days of receiving Form N30(2). You should write to the court with your objections, copying this to the defendant, and a judge will then make a decision (with or without a hearing).

If your claim is for an unspecified amount and the defendant admits the claim, he/she will send an admission form (Form N9C) to the court. The court will send you a copy together with a notice of admission form (Form N226). The defendant may admit without saying how much is admitted, offer a sum in satisfaction, or offer a sum in satisfaction and ask for time to pay. In each case, you must complete Form N226 and return it to the court by the date shown, sending a copy to the defendant at the same time. What happens next will depend on the nature of the defendant's admission. You should look at Court Leaflet Ex 308, which can be obtained free from any county court or from the internet (www.courtservice.gov.uk).

It is worth remembering that the easier you make it for the defendant to pay, the more likely you are to receive your payment in full.

3. Part admission

If the defendant admits liability only in part, you will have 14 days to decide whether or not to accept the part amount in full settlement of your claim. If you do not accept, the case will proceed as a defended case.

4. Defended cases

If the defendant disputes all of your claim, within 14 days of being served with your particulars of claim he/she must file either an 'acknowledgment of service' or a defence with the court. By filing an acknowledgment of service, the defendant gains extra time for filing a defence (the time is increased from 14 to 28 days from service of your particulars of claim). The court will notify you whether the defendant has taken this course.

The defendant must file a defence with the court within the required period. This will be either Form N9B or Form N9D. The court will send you a copy, together with a notice of defence (Form N152) and an allocation questionnaire (Form N150). If your claim is for a specified sum and the defendant is an individual whose address (or whose solicitor's business address) is in another court's area, your claim will be transferred automatically to the defendant's local court and you will also be sent a notice of transfer (Form N271).

You must complete and return the allocation questionnaire to the court by the time shown. The defendant also completes a questionnaire, and from the information you both provide, a procedural judge will decide whether your claim should be allocated to the small claims track or to one of the other procedures (the fast track or the multi-track). If you feel your case is appropriate for the small claims track, you should indicate this in the questionnaire. Note that in the small claims track you will only be able to use an expert in support of your

claim if the judge gives you permission, and you should therefore also indicate in the questionnaire (if relevant) that you want to use an expert.

You must return your completed questionnaire to the court named in the notice of defence (Form 152), which may be different to the court where you issued your claim because the claim has been transferred. You must also pay a fee - staff at any county court can tell you what it will be.

The court will send you a 'notice of allocation' (Form N157 or Form N160), telling you which track your claim has been allocated to. Your claim will not be allocated automatically to the small claims track, but it is the normal track for claims under £5,000. The notice of allocation will also inform you of the steps you must take ('directions') to prepare for the final hearing. Usually, it will also tell you the time, date and length of the final hearing (called a 'small claims hearing'). In some cases, there may also be a preliminary hearing (for instance, where unusual directions are required).

A Fixed Date Summons

A Fixed Date Summons is served on the defendant in the same way as a Default Summons and only differs in that it automatically fixes a date, usually about six weeks ahead, at which both parties must attend the court for a pre-trial review. If there has been an admission, judgment will be entered at this hearing.

The Small Claims Hearing

A small claims hearing is public but informal, and generally takes place before a district judge. The district judge will hear the arguments of both parties and come to his/her decision, giving brief reasons for it. If you win, you will be able to claim some of your costs back from the defendant, but the costs you can claim are very limited and no solicitors' costs will usually be allowed (see below).

Preparing your case

You must ensure that you have followed the required steps (the directions) within the time required. If you have been told to send documents to the defendant and the court, send copies and take the originals to the hearing.

It is important to remember that it is up to you to prove your claim. If the evidence is so finely balanced that the district judge cannot decide, he/she must inevitably decide against you. You may only be given a limited time to present your case. It is extremely important to marshal and present any evidence you have clearly and persuasively. A firm belief in the veracity of your case will not be enough.

1. Witnesses

If possible - and relevant - you should bring supporting witnesses to the court to back up your case. You should at least have some idea what they will say, although they should not be prompted. It is important that any witnesses you quote should also appear on the day. Copies of other people's letters or references to verbal statements are of little value without the presence of the person who made them.

Although you should initially pay the expenses of any witnesses you bring on your behalf, if you win you can require the defendant to pay the reasonable travelling expenses of any

witnesses and their loss of earnings up to a maximum of £50 a day. If the judge has given permission, you can also call expert evidence. This can be very useful, although one should be careful in small claims cases as an expert's actual fees may be greatly in excess of the money allowed for them in costs by the court (£200).

You should also produce any letters, contracts and agreements in support of your case as well as invoices, receipts and, where appropriate, evidence of damage or faults. Normally, you will have sent copies of these in advance to the defendant and the court.

2. Conduct

You should arrive early and ensure that you know in which room the hearing is to take place. Because of the pressure of cases, there is unlikely to be any guarantee as to when your case will be heard. For that reason it is best to set aside the entire day. You should ensure that you bring all relevant papers, especially the claim form and particulars of claim. These should be organised for easy access. Do not test the patience of the district judge. Because of the informal nature of small claims hearing the format varies from case to case. The district judge controls the procedure and can adopt any method that is fair. Generally, evidence is given seated and not under oath. Although legal expenses are usually not allowed, there is no reason why you cannot bring along a friend to help you conduct the case. However, except where the friend is your employee or you have the court's permission, you cannot send a friend to the hearing but not attend yourself. In giving your own evidence it is important to follow a firm chronological order, to be concise, and to remain clear and unemotional. Do not talk too quickly; the district judge will take notes. Listen carefully to any questions you are asked. When you have finished giving evidence the district judge may allow the defendant to ask you questions. Similarly the district judge may allow you to question the defendant and any of his/her witnesses.

The judgment is normally given at the end of the hearing. However, occasionally, the district judge may wish to send the decision later in writing. As well as the sum awarded, the successful claimant will be entitled to repayment by the defendant of his/her court fees, reasonable witness expenses and any necessary out of pocket expenses.

Enforcing Judgment

The easier you make it for the defendant to pay, the more likely you are to be fully paid. If a lump sum award is given this should be paid immediately by the defendant. Interest will run once again from the date of judgment on the sum awarded until it is paid. There are many kinds of enforcement involving the freezing of bank accounts and bankruptcy orders, but for the sums covered in this Guide they are scarcely practical. For sums approaching the £5,000 limit the threat of asking the court bailiff to enforce the judgment debt by seizing goods can often be an effective one. Although the bailiff does not act quickly, the threat is often sufficiently unpleasant to ensure fairly prompt payment. However it should be said that in many cases obtaining judgment is only half the battle.

General Advice

It is important that you remain aware of deadlines at all times. County courts are not always very efficient and often need chasing. Ensure that time limits are adhered to and the correct documents delivered. It is also important to remember that appropriate forms and advice can be obtained from most county courts. They also publish a comprehensive series of leaflets outlining the steps involved, which can be obtained from the Society.

This booklet only gives an outline of the procedure and for more information please contact the Society or a solicitor. The Society's solicitors (who prepared this booklet) are Stephens Innocent of 21 New Fetter Lane, London EC4A 1AW (tel: 020 7353 2000). They have a copyright helpline (tel: 09066 66 44 55) at which calls are charged at £1.50 per minute.

Appendices

The following appendices can be used, with amendments, to complete the particulars of claim box on the claim form (form N1).

Appendix A: Failure to send royalty statements or pay royalties:

1. The Defendant carries on business as a publisher, the Claimant as an author.
2. The Claimant's claim is for royalties which should have been paid on [] in respect of sales of [title of the book] pursuant to a publishing contract dated [].
3. Despite written requests the Claimant has received neither a royalty statement nor payment of overdue royalties.

The Claimant claims:

- a) Statements of royalties due and payment of them.
 - b) Interest pursuant to Section 69 of the County Court Act 1984 [or Section 1 of the Late Payment of Commercial Debts (Interest) Act 1998] on the sum of £[] at the rate of 8% per annum [or at the rate prevailing under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998] from [30 days after date of invoice] to date being a total of £[] and continuing at £[] per day to the date of judgment or earlier payment.
 - c) Costs.
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Appendix B: Non-payment for articles:

1. The Defendants own and publish [], a newspaper/magazine. The Claimant is a freelance writer.
2. The Claimant's claim is for the sum of £[] in respect of an invoice rendered to the Defendant on [] for article(s) written by the Claimant at the Defendant's request/accepted for publication by the Defendant/published in the Defendant's magazine.
3. Despite requests the invoice remains outstanding.

The Claimant claims:

- a) The invoice amount of £[].

b) Interest pursuant to Section 69 of the County Court Act 1984 [or Section 1 of the Late Payment of Commercial Debts (Interest) Act 1998] on the sum of £[] at the rate of 8% per annum [or at the rate prevailing under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998] from [30 days after date of invoice] to date being a total of £[] and continuing at £[] per day to the date of judgment or earlier payment.

c) Costs.

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