

## How to proceed? - England and Wales


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#### 1 Do I have to go to court or is there another alternative?

In England and Wales, the Government wants people to be able to resolve disputes in a way that is quick, efficient and cost effective and wants them to have a range of options available, and not just rely on the courts. Alternative Dispute Resolution (ADR) is about solving problems rather than imposing solutions, and in many cases it can yield creative and far reaching solutions to issues that are not able to be addressed within the court process.

Examples of ADR include Mediation and Arbitration; the MoJ even has a referral page of  trained mediators who will mediate for a sliding fixed-fee. There is also a free telephone mediation service that is offered in defended Small Claims Track Cases provided the parties agree. Should the parties attempt ADR, and the matter not conclude, there is nothing that precludes the case continuing through the court process.

Should you go to court, the procedure is governed by the  Civil Procedure Rules.

The information below may help you decide how best to resolve your dispute, it will only give you a general idea of what may happen. It does not explain everything about court rules, costs and procedures which may affect different types of claims in

different ways. You should also remember that even if you win your case the court cannot guarantee that you will be able to get any money you are owed.

## **2 Is there any time limit to bring a court action?**

There are time limits or limitation periods during which a court action should be made. The general limitation period is six years from a relevant date – for example the date of breach of contract or when damage was suffered or sometimes when any damage was discovered. Other limitation periods include one year for defamation or three years for clinical negligence and personal injury. Some, but not all, limitation periods can be found in the [Limitation Act 1980](#). The question of time limits can be clarified with a lawyer, legal adviser or a Citizens Advice Bureau in the United Kingdom.

## **3 Should I go to a court in this Member State?**

In most cases you should approach the court in the member state where the dispute arose. There are some exceptions to this rule which depend on the subject matter of the dispute<sup>[1]</sup> and there is a primarily paper based European Small Claims procedure . Further information is available from the [UK European Consumer Centre](#) .

[1] Cases involving contractual obligations, damages, consumer and employment contracts, patents/trademarks and ownership or tenancy of immovable property

## **4 If yes, which particular court should I go to in this Member State, given where I live and where the other party lives, or other aspects of my case?**

[Part 7](#) of the CPR and the accompanying Practice Directions can assist in determining how and where to start proceedings. The page “Jurisdiction” provides more information about the particular court in England and Wales at which a claim should be made. Details on court addresses can be found on the [Ministry of Justice website](#).

## **5 Which particular court should I go to in this Member State, given the nature of my case and the amount at stake?**

Again, Part 7 and the page “Jurisdiction” will provide more information about the particular court in England and Wales at which a claim should be made. Details on court addresses can be found on the [Ministry of Justice website](#).

## **6 Can I bring a court action by myself or do I have to go via an intermediary, such as a lawyer?**

There is no requirement for a person to seek the advice of, or be represented by, a lawyer; in a simple case of debt you may not consider it necessary to consult a solicitor. As a general rule, however, if your claim is for a sum over £10000 and particularly if it includes a claim for compensation ('damages'), it is advisable to seek the advice of a solicitor.

If the amount you are claiming is £10000 or less and is defended, you may take someone to the court hearing to speak on your behalf. A so-called 'lay representative' 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.

For many types of claim there is a 'pre-action protocol'<sup>#\_ftn1</sup>[1] which sets out the steps the court will expect you to have taken **before** you issue your claim. It involves things such as writing to the person you are claiming from to set out the details of your claim, exchanging some evidence, allowing them to see your medical records if your claim is for personal injury and trying to agree the medical expert you will use.

Remember that you also have to prove your claim. To do this you will need evidence, for example a report from your 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 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.

[1] There are a number of other pre-action protocols, such as for construction and engineering disputes, defamation, resolution of clinical disputes, professional negligence, and judicial review. Copies of all are available from a court or on the website of the [Ministry of Justice](#).

## **7 To initiate the case, who exactly do I apply to: to the reception office or the office of the clerk of the court or any other administration?**

The rules relating to starting civil proceedings are contained in part 7 of the Civil Procedure Rules[1], which should be read in conjunction with the accompanying practice direction. The basic rule is that, in the absence of any rule or practice direction a claim in England and Wales may be brought in any County Court hearing centre; in practice county court money only claims must be submitted on line or posted to [Money Claims on Line in Salford](#); *there is a complementary [online procedure for possession claims](#) as well.*

Certain claims such as those brought under the Consumer Credit Act procedure[2] must be brought in the County Court hearing centre where the Defendant resides or carries on a business. Some hearing centres have electronic facilities for communication; the rules in this respect are contained in part 5 of the CPR and the accompanying [practice direction](#), with special rules for the High Court. The details for the High Court can be found online [here](#).

Court staff cannot offer advice on the validity of a claim nor the appropriateness of your chosen course of action. You may be able to get advice from your Citizens Advice Bureau or Law Centre.

[1]Op cit

[2] CPR PD 7B5

### **8 In which language can I make my application? Can I do it orally or does it have to be in writing? Can I send my application by fax or by e-mail?**

Claims should be completed in writing and in English, although Welsh facilities do exist for [Welsh speakers](#). As noted above there is scope for electronic communication with the courts, both for lodging claims and making interlocutory applications, as well as for general communication with the Court. Guidance for this can be found [here](#).

### **9 Are there special forms for bringing actions, or, if not, how must I present my case? Are there elements that have to be included in the file?**

In general, to start a claim you must complete [Form N1](#); other forms exist for specific matters such as possession. The form N1 includes notes for guidance for the claimant. You can seek help from a Citizens Advice Bureau. The notes for guidance give details of the information that should be included with your claim. When lodging post, you should make one copy for yourself, one for the court and one for each defendant you are claiming from. The court will serve a sealed copy on the defendants.

There are a number of other forms for use in other types of proceedings or for later stages of a claim. These too are available from a court or the website of the [Ministry of Justice](#).

### **10 Will I have to pay court charges? If so, when? Will I have to pay a lawyer right from the introduction of my application?**

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 will be added to the amount the defendant owes you. You may also be allowed some costs to compensate you for time lost at work, although 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. Full details of court fees can be obtained in a leaflet on the [Ministry of Justice website](#). Here you will also find details about when it might not be necessary to pay a fee.

There may be further expenses. If the defendant defends your claim you may need witnesses to help tell the court what happened. You may have to pay their travelling expenses to and from the court and the money they would have earned that day. If you win, however, the court may order the defendant to pay towards those expenses.

You may also need to obtain a report from an expert such as 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 the experts' expenses and charges but, again, 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. If you win the case you may be able to claim your travel costs and something towards your lost earnings.

The amounts that can be claimed for witness, expert and legal advice costs are limited on the small claims track.

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.

Lawyers' fees are usually payable at the end of a case. If you win your case the court may order the defendant to pay some or all of your lawyers' fees. However, if you have a solicitor and your claim is for less than £5000 you will usually have to pay for his or her help yourself, even if you win your case. 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. More information on enforcing judgments can be obtained in a number of [leaflets](#).

### **11 Can I claim legal aid?**

There are different types of limited legal funding available in some civil matters. The type of funding and eligibility to receive it depends upon a number of factors including the type of legal action and the income of the applicant. More information is available at the following website on [legal aid](#).

### **12 From which moment is my action officially considered to have been brought? Will the authorities give me some feedback on whether or not my case has been properly presented?**

The date on which proceedings start is the date when the court issues a claim form. The date of issue is recorded by the court by a date stamp either on the claim form held on the court file or on the letter that accompanied the claim form when it was received by the court. If any necessary information is missing from the claim form or there are obvious errors the court will not issue the claim and will return the form to you. If the claim is issued the court will send you a Notice of Issue which gives details of the date of issue and the date the claim was sent to the defendant.

### **13 Will I have detailed information about the timing of subsequent events (such as the time allowed for me to enter an appearance)?**

Yes.

Once the claim has been issued and the defendants have been served with the N1 Claim Form and the supporting documents, the Defendants have 14 days to file a defence and/or contest jurisdiction. Once a defence has been lodged, the court will issue a provisional allocation to track, and Directions Questionnaire which must be returned within a set time. Once the DQ has been received, the matter will be transferred to a suitable court; generally this is the Defendant's local county court hearing centre. The Court will make sure that the parties are kept informed of all dates by which things are to be completed.

### **Related links**

Links of specific relevance have been provided in the answers above. The following are links of more general use:

[Ministry of Justice](#)

[Legal aid/help](#)

[Legal Services Commission](#)

[Bar Council of England and Wales](#)

[Law Society of England and Wales](#)

[Citizens Advice](#)

[Community Legal Advice](#)

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Last update: 17/12/2018