



Starting court action

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 arbitrator to help you to try and resolve your dispute.

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. 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

Many consumer complaints can be resolved using a straightforward procedure in the sheriff court.

When the value of what you are claiming is below £3,000 and the case is not complex you can use the small claims procedure in the sheriff court. You can use this procedure without having to employ a solicitor but you can have a solicitor to act for you if you want.

If your claim is within the financial limits for the small claims procedure but legally complicated you may have to use different court procedures for which a solicitor will normally be required. A complex case is one when, for example, the evidence for what has happened is difficult to get.

If you have a legally complicated case you should see an experienced adviser. If your claim is worth more than £3,000 it would be wise for you to use a solicitor to take any legal action because procedures used in court under different rules from the small claims procedure can be confusing.

Which court

A small claim in a consumer case can usually be made to the sheriff court nearest to where **you** live although you could use the sheriff court in the area where the trader has its business, but if this is elsewhere in the UK it may not be convenient. You can ask the court to check if it is the right one for the circumstances of your case. Sheriff courts are listed in the phone book.



How to start court action under the small claims procedure

Court action is started by filling in a form called a Principal Summons. At the same time you can fill in a form about the trader or person you are taking action against. This is called a Copy Summons. Check if the action is being taken against a sole trader or a company or organisation. The forms you fill in are slightly different for each because a sole trader has an option to ask the court for time to pay.

You cannot fill in every section of both forms as the sheriff clerk needs to set the court dates.

It is important that you complete the section called 'the statement of claim' as fully as you can. There are examples of statements of claim in the guidance notes on the Scottish Courts website at www.scotcourts.gov.uk which you might find helpful to read.

The claim you are making can be for:

- money; *or*
- getting goods returned; *or*
- getting someone to do something that should have been done (technically called an implement of an obligation).

You have to take or send the completed forms, with the correct fee (£65 in 2012) to the sheriff court. If you are raising the court action as an individual the sheriff clerk will usually send the summons to the trader for you. If you are a company or organisation you will have to send the forms out yourself.

You can fill in the forms online at the Scottish Courts website at www.scotcourts.gov.uk. However you will have to print them and take them to the sheriff court as there is not a mechanism for paying the fee to start the small claim on its website.

Sheriff clerk sets court dates

Once you have taken (lodged) the forms two dates will be added to your forms. They are as follows:

Return date - this is the date by which the person you are taking action against has to reply formally to the court on the Copy Summons

Hearing date – this is the date when the court can hear about your case or deal with it, for example, by granting you a court order called a decree. It is 14 days after the return date.

Trader admits the claim in full before the hearing date

When a trader admits the claim in full and pays the amount of claim to you before the hearing date you can let the court know that the matter is settled. The hearing date can then be cancelled. You can ask the trader to pay the court fee and any other expenses you have had.



Legal assistance

Costs

Under the small claims procedure you can use a solicitor but there is no legal aid for the small claims procedure. If you are eligible on income and capital grounds you can get legal aid for advice and assistance to help prepare the case. Legal aid is not available for representation in court.

Help in court

There are several ways in which you can get help to prepare for and present the case in the court but what help is available can depend on what your case is about and whether or not you have a solicitor. When you don't have a legal representative you can have

- lay support, if the court allows it, from a friend or relative who is only allowed to help you with your papers and give moral support
- lay representative to accompany you, if the court allows this, and this representative can make oral submissions on your behalf
- lay representative who can represent you in court to appear instead of you if you want, for example, a CAB adviser or other non-lawyer. If the case later goes to a proof hearing and you want to change your legal support to a solicitor it may be difficult to find one if they are being asked to take over the case at this critical later stage.

Hearing date in court

What happens at the hearing date in court will depend on how the person you are taking the claim against has responded to your claim. As you have raised the claim you should attend at the hearing date although you can be represented by someone else.

Here are some possible scenarios and what may happen next:

Trader/person has not responded at all and does not attend court – you will be successful in your claim and a decree will be granted. You may still have to enforce your decree with more legal action.

Trader/person has admitted the claim but wants time to pay you – if you have already agreed to time to pay then the court may simply grant you a decree on the hearing date. If there is any debate about the time to pay, because, for example, you don't want to agree to that, the court may try to settle the case on the hearing date by assisting the parties and/or trying to persuade you to go for mediation. If you can't agree then another date may be set for a proof hearing. If agreement can't be reached about what time to give the trader/person to pay but it is agreed in principle another date may be set to settle the case just on the time to pay issue.



Trader/person denies the claim or the amount claimed – when the trader or person is denying the claim it is likely that at the hearing date another date is set for a ‘proof’ hearing. Sometimes this could be several months ahead if the court is very busy.

What happens at a proof hearing

The proof hearing is when you and the trader/person against whom you have raised the legal action have to present all the details of the case from both your points of view. Each of you has to provide evidence for your position. You may have to ask witnesses to help you by coming to the court to give evidence. You may want to get help for a proof hearing and you can get help from the Citizens Advice Bureau service or an in-court advice service if there is one near you. The person against whom you have taken action may have employed a solicitor to act for them.

A proof hearing can be long and there may need to be several hearings to cover all the issues.

A decision will be made by the court once all the evidence has been presented. If you don’t agree with the decision you can appeal on a point of law to the sheriff principal within 14 days of the decision being made by the court. It is advisable to get legal help if you want to appeal on a point of law.

Enforcement of a court order (decree)

If you won your case but the trader/person has not paid you or completed what was agreed in the court decree you may have to go back to court to ask for the court order to be enforced. This can only be done by sheriff officers and a fee will be payable.

Other information on Adviceguide which might help

- Taking a trader to court
- Action a creditor can take
- Sheriff officers
- Help with legal costs

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This fact sheet is reviewed on a monthly basis. The law changes frequently. To confirm you are looking at the most up-to-date version, download the fact sheet from www.adviceguide.org.uk or contact your local Citizens Advice Bureau.

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