

COURTHOUSE

Small Claims Court (SCC)

We speak to a number of callers who may for a variety of reasons want to recover money from an individual or a business. Having exhausted all other options, callers frequently feel taking legal action in the Small Claims Court (SCC) is the only remedy they have left.

The SCC is not actually a court but is the small claims track of the county court. It deals with claims up to £10,000 with proposals to increase that to £15,000. Before commencing any action, there are certain things we would recommend you check:

- Check the evidence. Is there a contract or email correspondence which you are including as part of the claim? In other words, do you have sufficient evidence to prove the claim you wish to bring? When taking an action in the SCC you have to be able to prove on the balance of probabilities that you are entitled to make your claim.
- Do you have a claim which can be dealt with in the SCC? The most common types of claim dealt with in this court are generally those which are money claims such as compensation for faulty services or goods, disputes with landlords and tenants by way of compensation for repairs and wages owed by a former employer. It can also be used for personal injury matters where the total claim is under £10,000 and the personal injury element is not more than £1,000.
- That you have sent a letter to the potential defendant, which sets out the claim in full and requests payment. If that payment is not made within a specified time, usually 28 days, then you advise them you will be taking the matter to the SCC and in addition to the money owed you will also include in the claim the amount of the court fees and interest. There are rules concerning letters before action which were introduced on 1st October 2017. This is referred to as a debt recovery

protocol and more details can be found [here](#), paragraph 3 details the facts to be contained in the letter.

- Can the defendant afford to pay your claim and/or do they have any assets which are available to satisfy the judgement i.e. if you succeed will you be able to recover the money due? There may be no point considering an action against an individual who lives in rented property and is in receipt of benefits, for example. Equally, if you are considering taking action against a business, check to see if it is owned by an individual (sole trader), partnership or a limited company. You can check whether it is a limited company at [Companies House here](#).
- Think about time and how much time has passed since it was discovered the money being claimed was owed to you. Generally you only have six years from the date the money was due to bring a claim. This is known as the limitation period.
- Do you know where the defendant lives? It is important to have an address otherwise the court will not know where to send the papers. If the defendant is a company you will need the registered address which you can check on the Companies House website (see above).

Starting the action

Once the period set out in the letter before action has passed, and assuming there is no agreement reached for payment of the sums due, you are able to start the action in the SCC.

It is possible to start your action online using the moneyclaim website [here](#). Actions issued using this website are dealt with at the bulk centre in Northampton



and the court claim will be sent directly to the address you provide. Having been issued centrally, the claim will proceed in your local county court, although the defendant does have the right to request the matter is transferred to a court closer to them.

If you do not want to deal with the matter electronically you can issue a paper claim using an N1 form available [here](#). You will also find some useful guidance notes to help.

Once the form is complete you can send it (with one copy) to the relevant centre at County Court Money Claims Centre, PO Box 527, Salford, M5 0BY. The proceedings will then be issued and returned to your local court.

The most important part of the claim is the part which requests you to set out the brief details of the claim. In legal terms this is known as the particulars of claim and it is here you need to set out your case. It is important in this space to deal with the facts logically. If there was a contract, for example, set out the date of the contract and then detail in which way the contract was broken (if that was the case) and what is your loss as a result of that breach. You must then set out your loss and any interest claimed.

Be sure to include sufficient information so the court can understand what has happened but not every email or letter as that is a matter of evidence and can be dealt with later.

Fees

One of the main reasons to use the SCC is the fees charged to issue the claim and the fact that no legal costs are awarded against any party. This means the claimant can issue proceedings paying the relevant fee listed [here](#).

If the claimant is on a low income they may qualify for a fee remission or exemption. Further information can be found [here](#).

In addition to the fee payable to start the proceedings there may also be other fees for what is known as the Directions Questionnaire and the final hearing (see below).

Defending a claim

When the claim is issued it will be sent to the defendant with a response pack. This pack includes forms and information about what the defendant should do next.

The defendant needs to respond to the claim once they have received the particulars of claim – the part which sets out what the claim is for and the legal grounds on which the claimant is bringing the claim.

When considering the claim the defendant has three options, to either defend, admit or make a counterclaim. Within 14 days of receiving the particulars of claim the defendant must send to the court an acknowledgement of service, a defence and (counterclaim) or an admission form.

Defending

If the defendant returns the acknowledgment of service stating they wish to defend the action, the time to file the defence is increased from 14 days to 28 days. If the defendant fails to file the defence within that time,

the claimant can apply to the court for judgement in default to be issued. This means that the defendant's failure to file the defence allows the claimant to apply for judgement against them without the court having to decide the matter on the facts.

When the acknowledgement of service form is returned to the court the claimant will be notified when it was received and if the defendant is intending to defend or not. Once the defence is received by the court, a copy will also be sent to the claimant.

It may be part of the defendant's case that they wish to make a claim against the defendant, known as a counterclaim. For example, if a builder sues a customer for an unpaid invoice, the customer may counterclaim that the builder has caused damage and they want to claim for the damage.

If the claimant is claiming a fixed amount the relevant defence and counterclaim form is known as an N9(B) and if the claim is for an unspecified amount it will be an N9(D).

Admitting

If the defendant returns the acknowledgement of service form and the admission form indicating that they admit all or part of the claim this will be notified to the claimant. Both of these forms must be returned to the court within the 14-day period. However, if the defendant needs more time to put together their defence, for the part of the claim which is not admitted, this needs to be stated in the acknowledgement of service form and the time to file the defence will be extended to 28 days.

If the defendant is admitting all or part of the claim they will need to notify the court of the amount they are willing to pay if this is less than the total amount claimed. They can either pay the amount they admit to owing in full or ask for extra time to pay. To do this they will need to complete the admission form and provide details of their income and expenditure as requested. If the proposal for instalments is accepted they will need to make sure the payments are kept up to date.

If the defendant does admit the sum claimed the claimant can still enter judgement against them.

When a defence has been filed

If a defence is filed both parties are sent a Directions Questionnaire. The purpose of this form is to work out how complex the claim is, the amount of court time which may be allocated to it and what court track it may need to be allocated to. There is a fee for the claimant to pay on completion of this form (currently £40).

In this form there will be a question asking if you would like the court to arrange mediation to help settle the dispute. This is a voluntary and free service. If no agreement can be reached, the matter will then proceed to a court hearing.

Once the judge has considered the Directions Questionnaire and the court track has been allocated, in this case small claims track, the court will send a Notice of Allocation to both parties. This will provide details of the date, time and place of your court hearing.

In some circumstances, the court may offer to deal with the matter without a hearing or by way of mediation, if the parties agree, or offer a preliminary hearing if the judge feels that the claimant or defendant does not have reasonable prospects of success.

The Notice of Allocation will all set out 'directions' to prepare for the hearing and this will include such things as documents to be filed with the court or brought to the hearing. It may also include directions relating to such matters as expert witnesses. Sometimes the court will make special directions, such as requesting one party to clarify their case or stating whether certain evidence will or will not be accepted.

Where will the case be heard?

It is usual for the case to be transferred to the defendant's local court if the defendant is an individual and the claim is for a fixed amount. If this is not the case, either party may ask for the case to be transferred to a local court. This request can be made as part of the Directions Questionnaire (see above).

To proceed to a hearing the claimant is also required to pay a hearing fee.

Preparing for the hearing

The most important thing to remember is to be able to identify the relevant issues which you are asking the judge to consider. You may have lots of information about what may have happened for the case to be in court, but you need to identify any points of dispute or agreement.

It is also necessary to prepare the relevant paperwork to support those issues and comply with the relevant court rules. If you are making a claim for money relating to a contract, for example, you will need to be able to produce a copy of the contract, or if it relates to a disputed invoice, evidence of that should also be provided.

Witness statements are also an essential part of the preparation and you should prepare one for yourself and any witnesses you intend to take along with you. In general, witness statement should describe:

- the background to your claim
- how you and the defendant/claimant know each other
- what the defendant/claimant agreed to do and what went wrong
- the chronology – what happened and when
- the impact, for example, on your life, your family, your health, your home, car
- what you have tried to do to solve the problem or lessen the damage

The hearing

The hearing is the face-to-face meeting with the judge. This usually takes place in a room where you will sit one side of a table and the judge will sit on the other. This is a relatively informal legal setting with no gowns or wigs but you should still address the judge as 'Sir', 'Madam' or 'Judge'.

This is your opportunity to tell the judge what has happened. The judge may ask questions as the matter develops and you can ask questions of the other party and their witnesses.

After hearing from the parties the judge will make a decision and this will take the form of an order. If the matter is a claim for money then the order will state how much (if any) money should be paid by the defendant to the claimant. This is also known as a judgement and the court will send this by post to both parties.

If you are the defendant and are ordered to pay money to the claimant there is usually a time stated for when that payment should be made. Notice of the judgement is entered on the Register of Judgments, Orders and Fines record and will remain there for six years. This is commonly referred to as a CCJ (County Court Judgement).

If payment is made in full within one month to satisfy the judgement, then your credit rating will not be affected as the judgement will be removed. Payment after that time will mark the judgement as 'satisfied' and will appear on your credit rating file.

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