

Student **Advice** Centre

Small Claims

A self help pack:



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An Advisor's story:



"Alison came to the student advice centre feeling extremely frustrated as she could not get her £250 deposit back from

her landlord who was claiming that he was keeping it to pay for some broken furniture and cleaning costs. Alison was also annoyed because despite his promises the landlord had failed to re-emburse her for the dehumidyer she had had to buy because of the damp in her room. The landlord had ignored all Alison's letters so with our help and advice she issued a summons in the small claims court.

A claim was made for the deposit of £250, the cost of the dehumidifier which was £150 and

interest. Alison had evidence of the dehumidfyer cost, the damp in her room and copies of all the letters she had sent to the landlord.

In court we acted as lay representative for Alison and helped her present her cases and question the landlord. Alison's case was well prepared and clearly set out for the District Judge. The landlord had little evidence and no receipts for any of the alleged damage. Alison won her case and was awarded costs."



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The aim of this pack:

This is a self help guide to claiming back money through the small claims route. The pack explains the principle of small claims, when a claim can be made, the process of claiming and the advantages and disadvantages of making a claim against someone. It will help you decide whether to issue a claim and if so how to go about it.



The aim of this pack

This pack will guide you through the process of making a claim through the small claims route in the county court. If you are pursuing another party for a relatively small amount of money and do not want to get a solicitor involved this could be the route for you.

What are small claims?

They are civil disputes heard in the county court. They are between two parties one of whom is claiming the other owes them money.

Claims for money between two parties can be taken down three tracks: small claims track, fast track and multi-track. The key thing about small claims cases is that they are relatively simple. They generally involve sums of money of less than £5000 or less than £1000 for personal injury and housing disrepair. They can involve larger amounts of money but only if the case remains simple. Generally when more money is involved cases tend to become more complicated and turn into fast-track cases.

What is the difference between a small claims case and a fast track case?

Legal fees for solicitors cannot be claimed for small claims cases whether you win or lose. Therefore neither party have to worry about paying large fees whatever the outcome. The principle behind the small claims track is that non-legally qualified people can make and defend their own claims.

What are the most common forms of small claims made?

- Consumer claims e.g. goods are faulty or never arrived
- Disputes between landlords and tenants
- Debt – claim for money owed (e.g. between friends)
- Dispute over service e.g. poor workmanship
- Accident claims – e.g. personal injury

Does it cost anything to make a claim?

Yes. You will have to pay a court fee of between £30 and £120 and another £100 for an allocation questionnaire before the hearing. The court fee can

be waived if you are on a low income and issue the claim in person.

What happens if I win my claim?

The other party will be ordered to pay you some money. This might be the amount you are claiming for or less depending on the judge's decision.

The defendant will also be ordered to pay the court and allocation questionnaire fee. You can also claim back expenses from them e.g. travel and witness costs.

It is important to realise winning a claim does not guarantee payment. The other party will be ordered to pay you but they still might try to avoid doing so. The onus is on you to make them pay up. There are sanctions and action that can be taken to help you do this. See the section below on pursuing payment.

Making a small claim: A step by step guide



Before deciding that the small claims route is the path for you there are various things that you need to consider. It is important to weigh up the pros and cons thinking about time and money, the likelihood of a positive outcome and whether the defendant is likely to pay.

The information below explains in detail every step of the small claims procedure highlighting the hurdles you may come across at every one. After reading the following you should fully understand the process, be able to assess whether it is the course of action for you and follow it through independently.

NB: Although this information is designed to help you follow through a claim by yourself do not have to do it alone. If you have a valid claim free representation will be available for you at the Student Advice Centre.

Step 1: Issuing a summons



A summons is issued in the form of an N1 form. You can fill this in and submit it online or print it off and take it to the court in person. Remember that as a student you will probably get a reduction on the fee but only if you apply in person.

You will be asked for payment immediately when you hand in your form or submit it online.

To apply online go to www.moneyclaim.gov.uk. You will have to register first giving some personal details such as your name and address.

To print off a form go to http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetForm.do?court_forms_id=338

Make sure you write an answer in each section of the form:

Claimant – the person issuing the claim (you). You can issue a joint summons (e.g. from all members of a household) and only pay one fee.

Defendant – the person/party whom the claim is against i.e. whoever you are trying to get money from.

NB: It is very important to get this right. If there is no legally binding agreement between yourself and the party you are suing the case will be thrown out. A new summons will have to be issued and a new fee paid. Think

carefully about who you paid the money out to. Remember a contract does not have to be in writing.

You can put more than one name on the summons. For example you may want to name both the agency and the landlord or the supplier of goods and the retailer.

Brief details – Who is suing who for what; E.g. claimant suing landlord for not returning housing deposit at the end of housing contract.

Value – how much they owe you. This may be an exact amount e.g. deposit of £200 or an unspecified amount e.g. 'up to and not exceeding £2000'. An unspecified amount would be used in cases such as damages where the claimant is unsure of the value of items. In this case it would be up to the judge to decide. Issuing a claim for an unspecified amount can scare the defendant as they see a larger figure on the form and realise they could end up being liable for a lot of money.

NB: A claim must be honest. The amount owed might be bumped up a little with the presumption in mind that the defendant will always knock it down. However if you inflate the costs unrealistically the judge will see this and it will not help to create a positive impression.

* Remember if your claim goes above £5000 you are at risk of it going beyond the small claims track. This means that the other party can hire a solicitor to represent them in court and you could be liable for the fees if you lose.

Defendants name and address

– it is very important to get this right. That is why it is always essential to ensure you have someone's address when entering into a contract with them. If the summons is sent to the wrong address it will have to be reissued and another fee paid. If the defendant has deliberately given you a dodgy address you can claim back this fee from them but you will still have to chase them up for payment and for this you will need their correct address. If you have no address for them you will be unable to issue a claim.

Does, or will your claim, include any issues under the human rights act 1998? – if you think your human rights have been breached in relation to this case you will need to seek expert advice on how to pursue this. Otherwise tick 'No'.

Particulars of claim – this is where you write the specifics of the case. Make sure you are accurate as this document will always be referred back to. If you make a good case on this form the defendant may be convinced into paying up to avoid the courts. On the other hand you will have the opportunity to put your case forward properly in detail at a later date so do not spend unnecessary time on this.



Step 2: The defendant's response



The court will send the summons to the defendant. You should receive a N215 notice informing you of this. The defendant then has 14 days to respond.

How can the defendant respond?

The defendant has a number of choices:

- File an acknowledgement of service requesting 28 days to respond. This gives the defendant more time to consider the claim and decide what they want to do.
- Admit the claim and pay the money. The defendant may pay immediately or they may request time to pay. An offer of a monthly payment can be made if submitted with a financial statement. The court will generally accept monthly offers from students and those on a low income but not from a big landlord with a lot of money.
- Make an offer of payment. The defendant may not be willing to pay the full amount but will make an offer somewhere below that. It is then up to you whether or not to accept it or to go to court.

NB: Give this careful thought. If you decline you may end up going to court and getting nothing. Also if a reasonable offer of payment is made and declined the judge will want to know why. A judge will not look favorably on someone refusing an offer without good reason so make sure you can justify your reasons if this is what you decide to do.

- File a defence. The defendant disagrees they owe money and are willing to go to court to defend this claim.

- File a defence and issue a counterclaim. Not only might the defendant deny owing any money but they may say that actually the claimant owes them something. For example a landlord who kept a bond might say he is actually owed further money for outstanding rent and damages. If a counter claim is issued another court fee has to be paid.

NB: It is very important when issuing a summons to think of any possible way the other party could come back at you with a counterclaim. Once they have done this you will not be able to back out of the case without their permission and risk a County Court Judgment (CCJ) if you lose and cannot pay. Assess this risk carefully.

- Ignore the summons. If the defendant fails to respond a 'judgment in default' is issued. The claimant automatically wins and the defendant is ordered to pay.



Step 3: Determining the details of the hearing.

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This is done by completing an allocation questionnaire. This is sent to both parties. Its purpose is to:

- Determine which track to allocate the case to (e.g. small claims)
- Decide if a preliminary hearing is needed – this may happen if the case is very complicated and consideration is needed to determine the track. Or it may happen if the case is very close to settling and can be pushed into doing so.
- Determine how long the

hearing will take.

- Raise the subject of resolving the case. A box can be ticked if parties want another 4 weeks to try to resolve things.

NB: It looks good to a judge if Y is ticked as it shows you are willing to negotiate and do not want to waste the courts time.

- Focus on preparing for the hearing – witnesses/evidence etc.
- Determine the location of the court – the case will

automatically go to the defendant's home court but can be changed if you have a good reason e.g. childcare, travel issues, free representation in your local area.

NB: Now is the time to decide if you really want to go through with the case. Remember the allocation questionnaire costs £100. If a very strong defence has been put forward you may decide you do not want to pay this to follow it through.

Step 4: Preparing for the hearing

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It can take between 3-6 months to get a court date. Utilise this time to get together all the evidence you possibly can. This is the time to be creative, do some digging and think of every possible avenue you can go down for information and evidence.

For example for a housing case you should try to:

- Speak to current tenants
- Approach potential witnesses – people who have done work on the house etc.
- Gather photographic evidence – this is great as hard proof and also gives the judge a visual picture of things. Use photos from before you moved into the house, when you left and after you left to show the state of the house and whether it improved at any point.

- Check invoices – are the amounts correct? Who has done the work?

- Collect all written evidence – e.g. environmental health notices.

When you are trying to get another party to do something (pay money, do repairs etc.) keep all the evidence you can. Copy and save emails and letters and note down times and dates of telephone calls, who you spoke to and what was said. Try to get all promises in writing. Email is a good way of getting someone to do this as it seems less formal than a letter.

All evidence must be exchanged between the claimant and defendant two weeks before the hearing. If the defendant has not received a piece of evidence it cannot be used so send all evidence by registered post so

they cannot claim not to have it (put it all in one envelope to save money if you can!).

It is up to you to prove your case to the judge. Make sure your argument is strong, has legal standing and is fully backed up by evidence. Think of questions you can ask to prove your argument.

Prepare your case carefully and lay out your argument and evidence in a way that is going to be clear and helpful to the judge. When in court the judge may launch into a particular of the case and throw your argument off balance but if you have previously prepared a speech the judge cannot refuse to let you read it out. Doing this will help the judge to clearly follow your argument and ensure nothing gets missed out. It also makes it less scary for you as you know exactly what you are going

to say.

Do a summary sheet with bullet points for each piece of key evidence. Have an appendix with all the evidence attached. That way nothing can be missed and the judge will always know what they are looking at.

Step 5: The hearing

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The hearing will be friendly but formal. Sometimes the atmosphere can be a bit stuffy but try not to let this make you nervous. The court is not designed to intimidate people and the judge is there to try and assist both sides in presenting their cases.

The judge will determine the running of the hearing. They may be quite picky about the process and who can speak when etc. Don't let this worry you. Just be respectful and allow the other party to present their side without interruptions.

The judge will have already seen the summons and defence and your papers. They may have gone through them quite carefully but they may not have. Don't presume they know the case well. Be prepared to go through it step by step. Even if they think they understand the case they may not have grasped a full understanding. This is your chance to put it forward in person and try to sway them if they are not already agreeing with your argument. The judge may want to speed up proceedings

by concentrating on certain aspects of the case. As said above you do not have to do this. Politely insist on going through the material you have previously prepared

Again make sure all evidence is clearly marked and labeled to make things easier for the judge.



Step 6: The decision

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A decision should be made that day. A method of payment is also decided upon then and there.

If payment is made within 21 days no county court judgment is made. If it is decided payment will be by installments over a long amount of time then a County Court Judgment is issued against the debtor. This applies to the claimant too if a counter claim is lost so it is important to think about whether you can pay the money if you lose.

for 6 years and may make it difficult for you to obtain credit.

Appealing against a decision - If both parties were present at the hearing it is very difficult to appeal the decision. The losing party must show that the judge was wrong on a point of law or that there were serious irregularities. It is not enough to simply say the decision wasn't fair!

An appeal has to be lodged within two weeks and costs a fee.

Setting aside a judgment- either party can ask for the judgment to be set aside if:

- One of the two parties did not turn up to the hearing
- The summons was never received/a defence was never filed.

If a party did not turn up they need a good reason for this. A fee of £60 has to be paid and the case goes back to court.

* A County Court Judgment (CCJ) affects your credit rating

Getting Payment:



As mentioned before even after the court rules that the defendant is liable to pay you the money it still up to you to ensure you actually get it. If you are having problems with this there are a few paths you can go down to try to enforce payment. All cost a fee to execute and require knowing certain details about the defendant.

Warrant of execution

This means bailiffs are sent to the home to remove the defendant's possessions. It costs between £30 - £60 to send them. This option does not always work when defendants know how to play the system. Firstly the bailiffs have to be invited into the home and even then they cannot take items that do not belong to the person owing the debt. Therefore the defendant can claim things do not belong to them! Also if a landlord has lots of houses they may give the address of an empty home!

Garnishee order - you can force a third party to pay if they owe the defendant money or hold money of theirs. It costs £60. The third party has to have money in their bank account at the time of issue. You need the name, address and bank details of the third party.

Attachment of earnings order - money can be taken directly out of the defendant's wages. You need the employer's details. It costs £60.

A charging order against the landlord's property - after one of these is issued the landlord cannot sell the property without first paying back the money. It costs £50 to set up an order. This can be an effective way to make a landlord eventually pay but will probably not be immediate and will not work if the property is never sold.

NB: Before you consider any of the above enforcement action it is always a good idea to weigh up the cost against the amount owed and the likelihood of success.

Should I go down the small claims route?

You now should have a complete understanding of the small claims process and be able to assess the potential for your own situation. Before going ahead go through the check list below and be realistic about your answers!

The case:

- How strong is the case? Can you prove your claim? Is it just your word against theirs? If the judge has any doubt as to the defendant being guilty they will have to side with them
- What evidence do you have (hard evidence like photographs and letters)?
- Is there a risk of counterclaim?
- Can you afford to pay if any counterclaim is lost?



The defendant:

- Do you have full and reliable contact details for the defendant? - remember if you have a fake address you are never going to get the money as there will be no way to chase it up?

- Is the defendant likely to pay if ordered to?
 - Will there be an effective way to chase up the money if not?
 - Do they even have the means to pay? Whatever enforcement methods are used if the defendant has no money you are never going to get them to pay!
- You:**
- Do you have the time to see the case through?
 - Is the stress and effort that will have to go into it worth it? Is it going to affect your studies?

- Can you afford it? Bear in mind that you will have to pay the court fee and allocation questionnaire fee out of your own funds and even if you do get it back this may not be for a while. Don't leave yourself short.

Before embarking on the small claims route:

Write a letter. Court action should always be the last resort. Try every effort to recover the money first including a formal letter with a friendly threat of court action showing you know what you are talking about!

Talk to someone. Get help! The staff at the Student Advice Centre can advise you on the small claims process. They will chase up the money on your behalf and if that fails will help you decide if the small claims court is the route you want to take. They will assess if you have a strong enough case and if they think you do will help you prepare the evidence and even join you in court as your representative for free.