

# Going to Court



## Leaflet 3:

## First steps



“I sprained my ankle and got badly bruised when I slipped over on a wet floor in my local supermarket recently. I fell heavily, knocked into some shelves and a stack of tins fell on top of me. I was badly shaken, ached all over and had to take a week off work to recover.”

“My roof’s leaking. I’ve told my landlord about the problem but she’s done nothing. My bedroom ceiling has large damp patches on it and I’m worried it may collapse if the leak’s not mended soon. I think she’s hoping that I’ll give up and just move somewhere else.”

There are currently two other leaflets in this series. You might want to have a look at them. The first is about ways of dealing with a legal problem without going to court. The second explains some of the important things you need to do if you think you want to start a court case and the risks involved. If you’ve read both of them and have decided you are going to start court proceedings, then this leaflet is for you.

Even if you decide that going to court is the most suitable option for you, the court process offers opportunities to sort out your case and reach an agreement before you get as far as the final hearing. It may be worth at least trying to do this. Even if you can’t agree everything, you may be able to agree some things and possibly save yourself some time and money at the same time.

However there are times when going to court is likely to be the best or only option. If you’re in danger of losing your home, your children, your job or being deported you may need an urgent solution; one that only a court can provide. In such cases, don’t delay. Get legal advice.

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## What the courts expect of you

In many types of case, the courts expect both parties to a dispute to try and resolve it without starting court proceedings. They have rules to encourage both parties to exchange information about the dispute and to consider using a form of alternative dispute resolution.

You are expected to:

- comply with the rules;
- provide enough information to allow the other party to understand what the dispute is about and what you are asking for;
- act within the relevant time limits or if nothing specific is mentioned then within a reasonable period;
- consider using alternative dispute resolution ('ADR') e.g. mediation;
- minimise expense when there's a need to get expert evidence;
- give the other party the documents they've asked for unless there's good reason not to;
- tell the other party if you make arrangements for your legal costs to be paid by someone else e.g. an insurance company or trade union.

## Court protocols

A protocol is an official procedure explaining how to behave and what to do in particular situations. There are specific pre-action protocols for some categories of case. If your case is not in one of the categories listed below you are expected to follow the main rules ('Practice Direction – Pre-Action Conduct'). These describe how the court will normally expect you and the other parties to behave before proceedings are started.

You can find these rules at [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/practice\\_directions/pd\\_pre-action\\_conduct.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/practice_directions/pd_pre-action_conduct.htm).

Each protocol explains the steps you have to take to exchange information about the claim you are planning to make. If you look at the one that applies to your type of case, you will get a pretty clear idea just how much work is involved. The aim is to improve communication between the two of you so you both get enough

information to decide how likely it is that the case will succeed. As a result, you may become more willing to try and reach an agreement about the

### Protocol

A protocol is an official procedure explaining how to behave and what to do in particular situations.

### Pre-action

Before court proceedings start.

### Practice direction

Rules about how court cases must be prepared or presented.

dispute without starting court proceedings. Equally you may decide, having got advice, that your chances of success are good and that you'll get a better result from a Judge.

Currently there are specific pre-action protocols about:

- Construction and engineering
- Defamation
- Personal injury claims
- Clinical disputes
- Professional negligence
- Judicial review
- Disease and illness claims
- Housing disrepair
- Possession claims based on rent arrears
- Possession claims based on mortgage or home purchase plan arrears in respect of residential property
- Low value personal injury claims in road traffic accidents.

You can find them at [www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menu/protocol.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/menu/protocol.htm).

If a particular pre-action protocol applies to your case, then you have to follow both that and those parts of the main rules that apply in all cases. If there isn't a pre-action protocol that applies to your case then you just follow the rules in the 'Practice Direction – Pre-Action Conduct'.

The court will expect you to have complied with the relevant pre-action protocol if you start proceedings after the date that it came into

force. The extent to which you've complied with these rules will influence the court when they decide how to manage your claim and who should pay costs.

A court may ask you to explain what you've done to comply with the rules before you started court proceedings. If you haven't complied you may have to explain why not and the court can impose a penalty.

A court can:

- suspend the case until you do the things you should have done already;
- order you to pay part or all of the other party's costs;
- deprive you of interest or award you interest at a lower rate than you would otherwise have got on any money the defendant ends up having to pay you;
- order you to pay interest at a higher rate than would otherwise have been awarded, if you are the defendant and you end up having to pay the claimant money.

**Top tip!**

Keep an eye on the deadline for starting your claim. If it becomes necessary to start court proceedings because otherwise you would miss it, ask the court for an order to suspend the proceedings until you have followed the steps you were supposed to take before doing so.

If you are in doubt about whether or how these rules apply in your situation, don't delay, get legal advice.

## Settling your case

Settling your case means reaching an agreement with the other party to resolve the dispute. The advantages of an early, negotiated settlement are that it can be quicker, less expensive and less stressful than going to court. And you will be able to get on with the rest of your life sooner. Also, you can ask for things that a court wouldn't be able to give you and it avoids the uncertainty of a hearing.

However it's important to realise that reaching an agreement usually means being prepared to compromise – accepting less or paying more. It may be worth doing this to avoid the uncertainty and expense of litigation – but always get advice on this.

You can reach an agreement about how to settle your case at any time. Typically it's done through informal discussions either face to face or over the phone, writing or emailing each other, attending mediation or any combination of these methods. The way you record the agreement varies depending on whether you are settling your claim before or after you start a court case.

If you are making or responding to a proposal for resolving a problem, we suggest you do this in writing so it's clear what you are offering or agreeing to.

### Mara's story

There was water dripping into my home coming from the upstairs flat. At one point, I had three buckets in different places all collecting water. I rang the landlord, but he was unfriendly and very unhelpful. He seemed to think it wasn't his problem. I was panicking and wasn't sure what to do next. A friend suggested I check my household contents insurance policy and I discovered it included access to a free legal advice helpline. I phoned them and they were really helpful. They contacted the landlord for me and pointed out his legal responsibilities. His attitude to me changed completely as a result of that! I'm pleased to say we were able to agree what he needed to do to put things right. The leaks have been mended and the decorators are coming on Tuesday to redecorate all three rooms. It was such a relief to sort the problem out without having to do something like go to court.



If you are genuinely trying to settle your dispute, then writing 'without prejudice' at the top of your letter or email makes sure that the court won't get to see it if your attempts at resolving the problem come to nothing and the case goes to court. There are rules and procedures for most things to do with courts including 'without prejudice' offers. So it's best to get legal advice if you think you want to make one.

The time limit for starting your case still applies even if you are trying to resolve the dispute, for example, by making a complaint or going to mediation. If you miss the deadline, you've almost certainly lost your right to claim and as a result you will also lose any negotiating advantage you had. Put simply; you are no longer a threat.



- Whether you are the claimant or defendant, you can't make an offer to settle a claim without knowing how much it is worth. Otherwise you may start your negotiations with an unrealistically high or low figure and end up getting much less or paying more than the claim is worth. If you don't feel confident deciding how much to offer, get legal advice. See **Where to go for further help** for details.
- It's a good idea to talk to someone about whether to settle and if that is the best course of action, how and when to settle.
- If you settle, you cannot change your mind later. You can't bring the case again; you only get one go.
- Make sure you've included everything you're entitled to in the settlement, e.g. any interest payable, legal costs and court fees.
- Find out if there will be any deductions from your settlement. In some circumstances the person or organisation compensating you for an injury you've suffered has to repay some or all of the social security benefits you've received to meet your loss of earnings, the loss of your mobility or the cost of your care out of your compensation.
- Keep an eye on the deadline for starting your claim. Thinking your case is about to settle won't be accepted by a court as good reason for failing to start it in time. The only person benefiting from this will be the other party. Who knows, they may have been dragging out the negotiations with one eye on the clock, hoping you'd miss it.
- Don't delay; get independent legal advice about these and any other issues to do with your case. You may think you've got it sorted, but it won't harm to check!

## Court proceedings

If you start court proceedings and your claim is for £5,000 or less, you can use a free mediation service to try and reach an agreement about how to resolve your dispute. To get some idea how the small claims mediation service works see [www.direct.gov.uk/en/Video/CrimeandJustice/DG\\_WP197262](http://www.direct.gov.uk/en/Video/CrimeandJustice/DG_WP197262).

To find out what happens at a small claims hearing, see [www.direct.gov.uk/en/Video/CrimeandJustice/DG\\_WP197268](http://www.direct.gov.uk/en/Video/CrimeandJustice/DG_WP197268).

To get some idea of what to expect when you arrive at court and you are waiting for your hearing see [www.direct.gov.uk/en/HomeAndCommunity/BuyingAndSellingYourHome/Mortgagesandrepossessions/DG\\_179840](http://www.direct.gov.uk/en/HomeAndCommunity/BuyingAndSellingYourHome/Mortgagesandrepossessions/DG_179840).

To see what a typical Court of Appeal (Civil Division) court looks like, see [www.judiciary.gov.uk/interactive-learning/interactive-courtroom/coa-civil-scene](http://www.judiciary.gov.uk/interactive-learning/interactive-courtroom/coa-civil-scene).

## Costs warning!

If you lose you will almost always have to pay your opponent's legal costs as well as your own. It is possible to end up losing your home or be made bankrupt as a result of starting a court case.

If you win, your opponent should pay what the court awards you as well as your legal costs. However in practice, it's not always easy getting your hands on the money you are awarded. You may have to enforce the court's order yourself and pay the costs involved in doing this, at least to start off with.

It's easy to forget that it's possible and all too common for there to be no winners – only losers, in a court case.

## Getting advice

**Get advice about what the law says when you are unsure. Does it still support your case? If not, should you decide on a different option for solving your problem rather than going to court?**

## Jargon buster

**Alternative dispute resolution ('ADR')** – a range of options for resolving disputes, often without going through the process offered by the courts.

**Claimant** – someone who starts court proceedings.

**Defendant** – someone who has court proceedings brought against them.

**Litigation** – the process of going to court.

**Party** – this kind of 'party' isn't about balloons and dancing! It's a person or group of people forming one side in a dispute.

**Practice direction** – rules about how court cases must be prepared or presented.

**Pre-action** – before court proceedings start.

**Protocol** – an official procedure explaining how to behave and what to do in particular situations.

**Settling** – reaching an agreement to resolve a dispute.

**Without prejudice** – this means that something, e.g. a document or a conversation, can't normally be shown or referred to in court.

## Where to go for further help

- The Royal Courts of Justice Advice Bureau – [www.rcjadvic.org.uk](http://www.rcjadvic.org.uk)
- Citizens Advice – [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)
- Advicenow – [www.advicenow.org.uk](http://www.advicenow.org.uk)
- A Law Centre – [www.lawcentres.org.uk/lawcentres/detail/find](http://www.lawcentres.org.uk/lawcentres/detail/find)
- Legal Adviser Finder – <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

## The Royal Courts of Justice Advice Bureau

### We can help you if:

- you have a case in the County Court, High Court or Court of Appeal **and**
- you are not already represented by a solicitor or barrister.

### We have qualified solicitors who can give you free, confidential legal advice including help with:

- Court procedure
- Applications to the court
- Referral to free representation
- Referral to a free mediation service
- Free advice from a costs draftsman about orders for costs against you.

### We are independent of the courts.

To book an appointment to see a solicitor about a civil case in the County Court, High Court, Court of Appeal or in the family courts please call our appointments line **0844 856 3534** or **0300 456 8341** if you are calling from a mobile. The lines are open Monday to Friday 10am–1pm and 2pm–4.30pm. If we can help you we will offer you the next available appointment.

#### Photos:

Cover: Gail Lyle (Bolton CAB), Aaron Marsden (Bolton CAB) posing as customer. © Citizens Advice/ABCUL 2008.  
Page 4: © Citizens Advice 2004.

**Disclaimer:** The law is complicated. It is always best to get advice. This guide is not meant as a substitute for legal advice.

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Helping you find your way through court