

Going to Court



Leaflet 2:

Before you start



If you think you want to start a court case, there are some important things to think about, check and find out about before you begin.

Going to court may look simple enough to handle on your own but once you take a closer look at what is involved you may feel differently.

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

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RCJ Advice Bureau

Helping you find your way through court

Is your opponent worth suing?



Your opponent is the company, organisation, council or person you have a problem with. People who work in courts (lawyers, judges and court staff) often refer to an opponent as 'the other side'.

There is little point starting a court case, going on to win, and then finding out your opponent doesn't have two pennies to rub together! If part of what you want is money, you need to know they can pay you, otherwise you will have wasted both your time and money. There is no one else out there who will step in and pay you if the defendant doesn't, unless they are insured.

So, how do you find out if your opponent has money or assets here in the UK? There are some searches you can do that may help. Some are free, others charge.

You can:

- find out who owns a property and whether there are any debts secured on it at www.landregistry.gov.uk/public/property-ownership
- check whether someone is bankrupt at www.bis.gov.uk/insolvency/personal-insolvency/individual-insolvency-register
- ask for information about the registered keeper of a vehicle at www.gov.uk/request-information-from-dvla
- check if a vehicle is stolen, written off or on finance at www.hpicheck.com

- check whether a business or an individual has been fined or had court orders made against them at www.trustonline.org.uk
- find information about a company and their accounts at www.companieshouse.gov.uk
- find information about a registered charity and their accounts at www.charitycommission.gov.uk

The legal profession sometimes uses enquiry agents to investigate whether it is worth starting legal proceedings against someone. (The law calls this 'suing' someone.) Enquiry agents can provide a report about someone's financial status. Typically this will give you information about whether they are a homeowner or a tenant, whether they are bankrupt or have court orders against their name and their employment details. You may want to consider this option but check the cost before you go ahead. Some enquiry agents offer this service at a fixed cost; others charge an hourly rate.

If your opponent's money or assets are abroad or they are bankrupt, then in practice there is no point starting a legal case against them.

Finding and naming the right defendant

You need to be able to identify who may be responsible for what happened to you. Sometimes this is obvious but in other cases it can be hard to identify who made the mistake, made the decision or gave you the service that caused your problem. It is also possible for someone to be responsible for what happened to you even though they did not personally cause the problem. For example, employers can be held responsible for the actions of their employees.

So, more than one person, company or organisation may share the responsibility for what happened to you. In this kind of case there will be more than one defendant.

If you are not sure who is responsible, get legal advice. Starting proceedings against the wrong person, company or organisation is a waste of time and money. The court can order you to pay the legal costs of any defendant you have wrongly involved in legal proceedings.

Once you are sure you have identified the right defendant then you need to find them. Again this may be easy, but if it isn't you may be able to find your defendant by searching central or local records.

For example, you can:

- ask for information about the registered keeper of a vehicle at <https://www.gov.uk/request-information-from-dvla>
- find current and past residents at an address in the Electoral Register either at your local town hall or library or on the internet at www.192.com

Enquiry agents provide tracing services. You may want to consider this option but check the cost before you go ahead. Some enquiry agents will agree not to charge if they are unable to trace the defendant. This is sometimes referred to as 'no trace, no fee'. You can find an enquiry agent through the Association of British Investigators www.theabi.org.uk or the Institute of Professional Investigators www.ipi.org.uk.

Time limits

Time limits are very important in legal cases. There are strict rules about how much time you have for starting court proceedings. Time limits vary; they can range from as short as 21 days to many years. If you don't know what time limit applies to your case, or if the time limit is about to run out, it is important to get legal advice quickly.



What happens if I miss the deadline for starting court proceedings?

In most cases you only get one chance to start court proceedings. If you miss the deadline, your case will almost certainly not get off the ground. In very limited circumstances it might be possible to extend the deadline. If you are in this position, don't delay, get advice.

Carmela's story

I was thinking of starting court proceedings. I had found out that a time limit applied in my case but I didn't immediately ask what it was. Don't ask me why; I could kick myself now! When I eventually checked, I realised I had to start my case by that Friday or I would be too late. It was not a good week; the children were on holiday and I had hardly any time to myself to get things done. I had problems downloading the necessary form. When I had filled it in, I took it to the local library to use their scanner as I wanted to email it to the court office, but it didn't work. Eventually I scanned it in using a friend's scanner and attached it to an email ready to send to the court. By this time it was Friday, the day the deadline expired. I couldn't believe where the week had gone! I rang the court and got their email address. I emailed the application to them. Because it didn't bounce back I assumed all was well. I phoned the court to check that the email had arrived first thing Monday morning. It hadn't reached them; I had noted down the email address wrongly. But also it turned out that the court rules don't allow you to file a claim by email if you have to pay a court fee, which I did. I had left things too late to present my claim in time.

When you find out what the deadline is for your case, you may think it gives you plenty of time to prepare your case and start the court proceedings. You will be surprised how much work is involved to get your case ready in time. For example, if you need a medical report it can take months to get one. You may need to interview witnesses, draft statements, research information, fill in forms. This all takes time and effort and before you know it your deadline can catch up with you. It is very easy to miss a time limit and very difficult, often impossible, to persuade a court to allow you to start your case late.

The time limits for starting your case still apply 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 risk losing 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.



- Don't delay!
- Get advice.
- If you try to sort out your dispute by making a formal complaint or using mediation, then don't forget to keep an eye on the clock! It is possible to get so involved in these other processes that you miss the deadline for starting a court case.
- Lodge your claim in good time – well ahead of any deadline. That way if there are problems with the paperwork or documents missing, you have a chance to correct things in time.
- If the deadline for starting proceedings is very close don't rely on the post! Go to the court yourself and make sure you get there well within their opening hours.

Evidence

The person who starts a court case has to prove their case. You do this by providing the court with evidence. To win your case, the court must decide that your version of events is more likely than not to be the true version.

Your case must be based on facts and you must be able to provide the court with information that proves these facts. This information is called evidence. You can have a really good

case, but if you cannot prove it, you will lose it.

It isn't enough for you to say you know or believe something is true. You need evidence to support what you say happened, the loss you have been caused and the expenses you have had to pay if you want the court to decide in your favour. Evidence gives the court a reason for believing that something did or did

not happen, that a 'fact' is or is not true.

The courts have rules about what they will accept as evidence. This is to make sure that they only consider fair and reliable evidence when making their decision.

There are different kinds of evidence. Oral evidence is what you or another witness says to the court about the events on which your case is based. It has to be about the facts and based on your own knowledge; not on what someone else has told you or your opinion about something. In most cases you will have to prepare a witness statement beforehand if you want to give oral evidence at the final hearing.

A court will only take account of someone's opinion about something if it is given by an expert witness about something they are experts in that is relevant to the dispute, for example, a medical expert's opinion about whether or not you will fully recover from an accident. You need the court's permission to use expert evidence in court.

Real evidence is an object you use to prove a disputed fact, for example, a defective part used to repair your washing machine unsuccessfully or belongings damaged by damp and mould.

Documentary evidence is paper information, for example:

- estimates;
- receipts;
- invoices;
- repair quotes;
- letters, emails, faxes, notes;

- a diary or calendar;
- written agreements;
- bank statements;
- photographs;
- diagrams;
- medical records;
- an expert's report, for example, from a surveyor, an engineer or a doctor.

The courts may not accept everything you might think of as evidence. For example, if you secretly record or film an interview or meeting you have with someone else without their consent, you may not be able to use this information in court. Worse still, it may give the impression you have been doing something underhand. This may affect how the court sees you and whether they accept your other evidence as convincing.

When you are thinking about how to prove the facts of your case, you want to put together the best evidence you can; the stronger the better. The strongest evidence is usually information given by an independent witness (not you, your family or a friend) who saw the events and evidence created at the time the disputed event took place, for example, photographs taken immediately after an accident showing the position of the vehicles involved and their condition.

You also need to anticipate the points the other side may make to support their version of events and think about what evidence to collect to disprove what they say.

John's story

My builder fitted new guttering and down-pipes on my house six months ago. After a couple of months I realised that the guttering slopes up towards the down-pipe which means the water can't flow away from the house properly. It builds up in the guttering and in heavy rain starts to pour over the edge. The joints are leaking in places as well. Ever since then I have been trying to persuade him to come back and fix the problem. The first time I phoned him, we had a friendly chat, I explained the problem and he said he would be round to sort it out. I have phoned him several times since but now he won't speak to me anymore. I can't afford to pay someone else to correct his mistakes and at my age I can't start climbing ladders to see if I can sort it out myself.



What evidence do I need to support my claim if I decide to start court proceedings?

- Something that shows what work the builder agreed to do. The original written estimate or quote may provide the best evidence of this. You may also have, for example, some emails that help prove this.
- Something showing that you paid his bill when the work was completed, for example, a receipted invoice or a bank statement showing the amount transferred into the builder's account.
- Something that supports what you say about the various problems with the guttering. Remember, the judge will not visit your home to look for him or herself. You have to find a way to bring the evidence to them.
- This could be one set of photographs taken in good weather clearly showing the slope of the guttering and a second set taken when it is raining to show the leaking and spillage caused by the poor installation.
- Alternatively or in addition to the photographs, you may want evidence from an expert witness – a surveyor – who inspects the guttering and down pipes, watches how it works in wet weather and reports on what they have seen.

If you cannot afford to pay an expert, maybe your next door neighbour will be prepared to describe what they have seen happen with your guttering when it rains.

Ashish's story

I was cycling along the road between home and work when I hit a ridge of tarmac and was thrown off my bike. I injured my knee as a result and my bike was damaged. Someone called an ambulance and I was taken to Vale Hospital. I want to make a claim against the council for failing to maintain and repair the area. The road surface was dangerous.



What evidence do I need to support my claim if I decide to start court proceedings?

- Something that shows where the accident took place, for example, an ambulance or police record.
- Something that shows what caused the accident, for example, photos or video of the ridge of tarmac.
- Something that shows the injury you suffered, for example, a photo and hospital records or a medical report.

- Be prepared – get the evidence you need to support your case. If in doubt about what you need, get advice.
- Get organised! Keep copies of letters sent, fax transmission sheets, emails sent and received and original letters received in order in a folder.
- If you need an expert witness, allow enough time to find the right expert. This can take longer than you expect.
- Expert reports, particularly from medical experts often take a long time to get and are expensive.
- Find out what you need to do to get your evidence ready for the court. If in doubt, get advice.

**Top
tips!**

Timeline

This is a list in date order of relevant actions or events about the facts of your case. It is sometimes called a 'chronology'. It should include a short description of what happened on each date and any documents you have relating to that date.

Ashish's timeline might look like this:

Date	Time	Event	Document
Friday May 24th 2013	8.30 am	Left home to cycle to work	
24/5/13	8.50 am	Came off bike in New Road	Witness statement and photo taken on witness's mobile phone
24/5/13	9.25 am	Taken to A&E dept, Vale Hospital	Hospital record
28/5/13	1.30 pm	Returned home from hospital	Discharge letter from hospital Diary entry
10/6/13		Bike mended	Receipted invoice from bike shop
24/6/13		Returned to work	Diary entry

Witnesses

- Check that any witness who can give information that supports your case understands their role. If necessary, are they willing to attend court? You may be surprised to find that people who were happy to talk to you about what they saw happen or heard said can become reluctant to help out when they realise you want to write down what they have told you in a statement and get them to sign it.
- If it is true, it may help to explain to your witness that they could make the difference between you winning or losing your case.
- Hopefully, if they were ever in a similar situation, they would be lucky enough to find someone who would do the same for them.
- Don't delay; it takes time to prepare a witness statement. It needs to be clear, logical and in language the witness understands. It must reflect what they told you and not 'spun' into something similar but different. You must not tell a witness what you want them to say or put words into their mouth.
- The advantages of calling a witness are that they may give clear, direct evidence that supports your case.
- The disadvantages are that your witness may be vague, forgetful, unsure, frightened, or panicky. They may not turn up or end up being more useful to your opponent than you.

Assessing the risks

There are lots of risks to weigh up before you decide to start a court case.

Here are some of them:

- Legal costs – if you lose you will almost always have to pay your opponent's costs as well as your own. (The rules are different for small claims. For more information about costs in the small claims track, see **Leaflet 4**.) This means that it is possible to end up losing your home or being made bankrupt as a result of starting a court case.
- Your opponent may make their own claim against you (a 'counterclaim'). If they succeed in their claim, you will have a court judgment against your name and this can affect your credit rating.
- Court fees – you will have to pay these up front unless you are an individual and your financial circumstances mean you can get court services free or at a reduced rate. For information about whether you have to pay court fees see <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex160a-from-07-october-eng.pdf>
- You may have to pay more than one court fee during a case. You can find information about the different fees payable at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>

- You may not get back the court fees you pay out. You will not get them back if you lose, and even if you win, unless the defendant pays you in full voluntarily or you successfully force them to pay you, you can end up out of pocket.
- How likely is it that you are going to win? If you are not certain, get some legal advice.
- Time commitment – doing research, collecting evidence, serving court papers, writing statements, filling in forms all takes time. More time than most people imagine. Your social life is likely to go out of the window!
- Taking time off from work – you may have to use up holiday entitlement to attend any hearings. If you are self employed, you may lose money and more than one day's money if there are several hearings.
- Inconvenience – you may have to travel to a different court to the one where you started your case. This costs money and takes up time.
- In some courts the process may be more formal than you are expecting. This can be intimidating and cause stress.

Reminder!

- Losing a case or making mistakes in a court case can lead to orders that you pay legal costs.
- Costs frequently exceed the amount you are claiming – so if you win, unless the other side can and does pay your legal costs, you can end up with nothing.
- If you lose, you can end up having to sell your house in order pay your own and your opponent's legal costs.
- There may be a significant emotional impact on you and your family.
- Even if you win, you may have problems getting your hands on what the court awards you. The court doesn't enforce any judgment it makes in your favour; you have to do this and pay the costs involved. You may not get this money back.

Getting advice

Get advice about what the law says at any point where 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

Assets – property of value available to meet debts, for example, a house, flat, painting, jewellery or car.

Chronology – a list in date order of relevant actions or events about the facts of your case.

Claimant – someone who starts court proceedings.

Defendant – someone who has court proceedings brought against them.

Legal charge – a document which, if you sign it, gives someone the right to get back what you owe them by selling the asset you have offered them as security for the debt.

Secured debt – a debt is said to be 'secured' when you borrow money and the lender takes a legal charge over an asset belonging to you, for example, a house, so that if you don't repay the loan they can get their money back by forcing you to sell it.

Where to go for further help

How to find a legal advisor

The Royal Courts of Justice Advice Bureau can help you if:

- you have a case in the County Court, High Court, Administrative Court or Court of Appeal in civil or family cases

and

- you are not already represented by a solicitor or barrister.

The Royal Courts of Justice Advice Bureau has 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.

The Royal Courts of Justice Advice Bureau is independent of the courts and can help wherever you live in England or Wales.

To book an appointment to see a solicitor please see www.rcjadvic.org.uk for latest appointment details.

You can also ask friends and family for a recommendation. To find a local solicitor who can help you, search here:

- find-legal-advice.justice.gov.uk
- www.lawsociety.org.uk/find-a-solicitor
- www.lawcentres.org.uk/i-am-looking-for-advice

Help finding court forms

Court staff may be able to explain court procedures and help you find a court form. They are not able to give you legal advice.

You can search for court forms here:

<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

(continued)

Where to go for further help – continued

Help when at court

The Personal Support Unit (PSU) supports people going through the court process without a lawyer. Volunteers offer a free and confidential service. PSU aims to help you manage your own case yourself. PSU does not give legal advice or act on your behalf, but can offer practical help such as going to your hearing with you and help completing and filing your forms.

For more information as well as the location and contact information for your nearest PSU, please visit www.thepsu.org or call **020 7947 7701/7703**.

Sources of information about the law and your rights

Advicenow www.advicenow.org.uk

Adviceguide from Citizens Advice www.adviceguide.org.uk

Feedback

Whether you have read one or all of the Going to court leaflets, we would love to hear from you. Please tell us what you think of them by completing our survey (www.surveymonkey.com/s/FGZ3G2B). We will use your feedback to improve the leaflets and make sure they are as helpful as possible. Thank you!

Photos:

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

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