

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 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."

This is one of a series of five leaflets. 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 describes some of the important things you need to do if you think you want to start court proceedings. If you have read both of them and have decided you are going to start court proceedings, then this leaflet is for you. The fourth leaflet explains what you have to do at each of the main stages involved in the court process. The fifth and last leaflet explains how to deal with a court hearing if you are going to represent yourself and what to do if you want to appeal against a court decision.

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 are 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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RCJ Advice Bureau

Helping you find your way through court

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'), for example, mediation;
- minimise expense when there is a need to get expert evidence;
- give the other party the documents they have asked for unless there is a good reason not to;
- tell the other party if you make arrangements for your legal costs to be paid by someone else, for example, an insurance company or trade union.

Courts call a person who starts court proceedings the 'claimant' and the company, organisation, council or person you start proceedings against, the 'defendant'.

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 party to behave before proceedings start. You can find these rules at www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct

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

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.



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 dispute without starting court proceedings. Equally you may decide, having got advice, that your chances of success are good and that you will 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
- Claims for damages in relation to the physical state of commercial property at termination of a tenancy (the 'Dilapidations Protocol')
- Low value personal injury (employer's liability and public liability) claims

You can find them at: www.justice.gov.uk/courts/procedure-rules/civil/protocol

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 have complied with these rules will influence the court when it decides how to manage your claim and who should pay the costs.

A court may ask you to explain what you did to comply with the rules before you started court proceedings. If you haven't complied with them 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. See **Where to go for further help**.

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.

Reasons for sorting out your dispute by negotiation and agreement (settling) instead of going to court (litigating):

- It may be less stressful.
- It may be quicker.
- It can be cheaper.
- It can create more certainty about the outcome.
- You can ask for things that a court will not be able to give you.

However, 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 going to court (litigation) – but if at all possible get advice on this. See **Where to go for further help**.

You can reach an agreement about how to settle your case at any time. Typically it is 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 want to suggest a way of settling your case (you may hear this referred to as ‘making an offer’ or ‘offering to settle’) or to respond to a proposal for resolving a problem, we suggest you do this in writing so it is 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 was not 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 will not 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 is 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 have 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 cannot 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 is 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 cannot bring the case again; you only get one go.
- Make sure you have included everything you are entitled to in the settlement, for example, 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 has to repay some or all of the social security benefits you have 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 will not 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 would miss it.
- Don't delay; get independent legal advice about these and any other issues to do with your case. You may think you have got it sorted, but it won't harm to check!

Court proceedings

If you start court proceedings and your claim is for £10,000 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.youtube.com/watch?v=cvNNX6Jj6y8

To get some idea of what to expect when you arrive at court and you are waiting for your hearing see: www.youtube.com/watch?v=ZZyb4HYC5A8

For more information about court proceedings, see **Going to Court Leaflets 4 and 5** in this series.

Costs warning!

If you lose you will almost always have to pay the other party's legal 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**.) 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 is 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 is 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 is 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 conversation, can't normally be shown or referred to in court.

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 overleaf)

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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RCJ Advice Bureau
Helping you find your way through court