

# Making a Small Claim to Recover an Unpaid Debt

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Business

## Introduction

Small businesses often experience late payments or non-payments of invoices by both consumers and trade customers. Late payments and non-payments affect cash flow and make it difficult for a business to pay its suppliers. In more significant cases, late payments can affect the ability of a business to continue to trade.

This factsheet provides information about how to recover debts through the small claims procedure, which involves taking court proceedings to recover the money due. It also includes examples of typical reasons for making a small claim.

## What is a small claim?

Small claims are civil claims that are resolved through a simple court procedure in County Courts in England and Wales, Sheriff Courts in Scotland, and Small Claims Courts in Northern Ireland, usually on a relatively informal basis. A small claim gives an organisation or business owner the opportunity to recover an unpaid debt relatively quickly, in most cases without needing a solicitor.

The definition of a small claim varies by value across the UK:

- In England and Wales, small claims are defined as claims amounting to less than £10,000.
- In Scotland, small claims are defined as claims amounting to less than £5,000.
- In Northern Ireland, small claims are defined as claims amounting to less than £3,000.

Typical small claims include:

Disputes over money owed for work done or goods delivered.

- Disputes over ownership of goods.
- Disputes between landlords and tenants, for example over rent or deposits.
- Accident claims, for example over vehicle damage.

There are some types of dispute that cannot be pursued as small claims, for example disagreements between landlords and tenants over possession of a property. There are also exceptions for personal injury claims. For example, in England and Wales, small claims for personal injury can only be made for amounts up to £1,000.

## Before making a small claim

It is essential to make a reasonable effort to reach an agreement for payment with the debtor before commencing court proceedings. If the court finds that a reasonable effort has not been made costs will not be awarded, even if the claim is ultimately successful.

Initially, steps should be taken to explain the position to the debtor, understand their situation and seek to negotiate a settlement with them. If payment is not made, a letter (known as a 'letter before action') should then be sent to the debtor, asking them to pay the invoice as soon as possible and stating the steps that will be taken if payment is not received within a certain number of days.

Before making a claim, it is also important to consider whether or not it will be financially worthwhile to do so, as it can be a costly and time-consuming process. Typical costs associated with making a claim in the small claims court include court fees, legal fees, experts' fees and travel expenses.

Even if a claim is successful, there is no guarantee that the debt will be paid. If the debtor has no money or equivalent assets, a court cannot enforce payment. A debtor's financial situation can be assessed by searching for previous court judgments against them. Searches of court registers can be made via Trust Online ([www.trustonline.org.uk](http://www.trustonline.org.uk)). Searches cost between £6 and £10.

Making a claim in a small claims court should only be considered as a last resort after all other options for recovering the debt have been exhausted.

## Alternative options for recovering a debt

### Mediation and arbitration

As an alternative to issuing a claim with a small claims court, it is possible to seek a form of alternative dispute resolution (ADR), such as mediation or arbitration.

Mediation services do not decide the outcome of disputes. They help both parties in the dispute reach an agreed solution between themselves. They can be cheaper and more effective than taking court proceedings as mediation can enable the parties to maintain their relationship in the future.

For directories of mediation providers, go to:

- **England and Wales:** the Civil Mediation Council (<https://civilmediation.org>).
- **Scotland:** Scottish Mediation Service ([www.scottishmediation.org.uk](http://www.scottishmediation.org.uk)/find-a-mediator).
- **Northern Ireland:** Law Society Mediation Services ([www.lawsoc-ni.org/mediation-services](http://www.lawsoc-ni.org/mediation-services)).

Another type of ADR is arbitration, in which the two parties agree to be bound by a solution determined by an independent arbitrator. Information about arbitration for business disputes, including unpaid debts, is provided by the Chartered Institute of Arbitrators at [www.ciarb.org/disputes/schemes/business-arbitration-scheme](http://www.ciarb.org/disputes/schemes/business-arbitration-scheme).

## Complaining to the Small Business Commissioner

The Small Business Commissioner investigates complaints from small businesses about problems getting paid by large customers (those with 50 or more employees). The recommendations it makes are not legally binding. However, large customers that fail to pay a debt when recommended to do so by the Small Business Commissioner risk reputational damage.

For more information, go to [www.smallbusinesscommissioner.gov.uk/deal-with-an-unpaid-invoice/get-advice/complain-to-the-small-business-commissioner](http://www.smallbusinesscommissioner.gov.uk/deal-with-an-unpaid-invoice/get-advice/complain-to-the-small-business-commissioner).

## How to make a small claim

If other options are unsuccessful, making a small claim can be an effective method of recovering the debt. In order to make a small claim, claimants must complete a claim form, either on paper or online. The claim process differs slightly around the UK, as follows:

### England and Wales

In England and Wales, claimants who are seeking to recover a sum of money can make a claim online at [www.gov.uk/make-money-claim](http://www.gov.uk/make-money-claim), where it is also possible to download paper forms for making a postal claim.

The required fee must be paid on submission of the forms. The fee varies according to the amount of the claim and whether or not the proceedings are issued online, starting at £25 for a claim of up to £300 and rising to around £450 for a claim of between £5,000 and £10,000.

Go to [www.gov.uk/make-court-claim-for-money/court-fees](http://www.gov.uk/make-court-claim-for-money/court-fees) for more information about court fees.

### Scotland

In Scotland, claimants (known as 'pursuers') can claim online via the Scottish Courts and Tribunals website at [www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim](http://www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim), where it is also possible to download paper forms for making a claim by post.

The fee for making a small claim in Scotland is £104, or £19 for claims valued at under £300. Go to [www.scotcourts.gov.uk/rules-and-practice/fees/sheriff-court-fees](http://www.scotcourts.gov.uk/rules-and-practice/fees/sheriff-court-fees) for more information about Sherriff Court fees.

General information about the small claims process in Scotland is available at [www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim](http://www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---making-a-claim).

### Northern Ireland

In Northern Ireland, small claims can be made using the Department of Justice small claims online service ([www.justice-ni.gov.uk/articles/online-services](http://www.justice-ni.gov.uk/articles/online-services)).

Paper forms are available at [www.justice-ni.gov.uk/publications/small-claims-forms](http://www.justice-ni.gov.uk/publications/small-claims-forms), where it is also possible to download a Small Claims Guide that provides detailed information about the small claims process.

Court fees vary according to the value of the claim, starting at £37 for a claim of up to £300 and rising to £124 for a claim that exceeds £1,000.

## The court process following the issue of a small claim

The basic court process following the issue of small claims proceedings is essentially the same across the UK. However, claimants should check the specific steps they are required to take in their particular geographical area to ensure that they comply with any minor differences in procedure. Claimants should also understand the terminology used in the different courts.

Once a court has processed the claim form, it will issue the claim to the defendant and send the claimant a notice of issue. The defendant then has a set period of time (usually 14 days, although this can be extended) in which to admit, partially admit or dispute the claim.

- If the defendant does not respond, the claimant can request that the court enter a 'judgment by default' (or, where the claim was for an unspecified amount, enter judgment for an amount to be decided by the court). On processing a judgment by default request, the court will issue a judgment for the claimant, setting out the details of the amount the defendant must pay.
- If the defendant admits the claim, they should make an offer to pay the debt, either in full or by instalments. If the offer is accepted by the claimant, they can request the court to enter a judgment on admission. This orders the defendant to pay the debt as offered. If a claimant does not accept the offer, the court can make a decision, which may involve a hearing, and issue an order for payment if applicable.
- If the defendant disputes the claim, the court will send the claimant a copy of the defence. For example, the defendant may deny that they owed the money, claim that they have already paid it, or issue a counterclaim stating that they are owed money by the claimant.

If the dispute cannot be settled, the court may ask the claimant if they would like to use the court's small claims mediation service to reach an agreement with the defendant. If the claimant refuses mediation, or if mediation is unsuccessful, the dispute will go to a court hearing.

When a case is allocated to a court hearing, the court sends directions instructing both the claimant and the defendant to prepare for the hearing. The court also outlines any pre-trial and hearing fees that apply.

Both parties have the opportunity to submit supporting documents and request permission to engage an expert witness, such as in cases requiring expert scientific or technical knowledge.

An expert witness is an independent professional who provides technical advice that can assist the court in deciding disputes. For example, in a dispute about payment of a debt for construction work, the defendant might have refused to pay for the work done on the grounds that the building had not been constructed properly, so expert witnesses might be called upon by either or both parties to give their opinion about this.

After a hearing, the judge issues an order based on the evidence provided by both parties and the decision that has been reached. Both the claimant and the defendant can request permission to appeal against the decision. However, the judge will only grant permission if he or she considers that there are proper grounds.

## Enforcement of court orders

Even if a small claim is successful, and a decision is made by the court in favour of the claimant, there is no guarantee that the debt will be paid. When a court issues a payment order but the defendant still does not pay, the claimant can consider further action.

The next step is for the claimant to ask the court to enforce the debt payment. However, in doing this, a claimant would need to assess whether issuing enforcement procedures would be worthwhile. If enforcement procedures are issued, the claimant will be required to pay additional court fees, and if the defendant does not have the money or equivalent assets with which to pay the debt, the court will not be able to retrieve it.

If the defendant is a limited company that is unable to pay an enforced debt, the claimant has the option of starting insolvency proceedings against it. However, this can be an expensive and complicated process and legal advice should always be sought before considering this option.

There is more information about enforcing a judgment in England and Wales at [www.gov.uk/make-court-claim-for-money/enforce-a-judgment](http://www.gov.uk/make-court-claim-for-money/enforce-a-judgment).

Details about enforcing a judgment in Scotland are available at [www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---enforcement-of-the-decision](http://www.scotcourts.gov.uk/taking-action/simple-procedure/simple-procedure---enforcement-of-the-decision). In Northern Ireland, successful claimants can apply to the Enforcement of Judgments Office ([www.justice-ni.gov.uk/articles/enforcement-judgments-office](http://www.justice-ni.gov.uk/articles/enforcement-judgments-office)).

## Hints and tips

- The small claims procedure should be considered as a last resort after all other avenues for recovering the debt have been explored.
- Before issuing proceedings at the small claims court, claimants should communicate with the debtor and try to come to an agreement, for example by offering to accept payment in instalments.
- Alternatives to making a small claim should always be considered, such as ADR schemes, for example a mediation service.
- Before making a claim, it is important to investigate the financial situation of the debtor and consider whether making a claim will be worthwhile.

## Further information

BIF067 Establishing a Trade Credit Policy  
BIF386 Invoices and Receipts  
BIF422 Credit Control

## Useful contacts

HM Courts & Tribunals Service (HMCTS) is responsible for court proceedings in England and Wales. It publishes guidance about the small claims procedure and has an online directory of courts. Website: [www.gov.uk/government/organisations/hm-courts-and-tribunals-service](http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service)

The Scottish Courts and Tribunals Service is responsible for court proceedings in Scottish courts. It provides information about making a claim and has an online find-a-court facility.  
Tel: (0131) 444 3300  
Website: [www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

The Northern Ireland Courts and Tribunals Service is responsible for court proceedings in Northern Ireland. It publishes information about how to make a claim and provides contact information for all the courts in Northern Ireland.

Website: [www.courtsni.gov.uk](http://www.courtsni.gov.uk)

The Chartered Institute of Arbitrators (CI Arb) is a professional body representing those working in dispute resolution. It provides guidance about dispute resolution and has an online directory of members.

Website: [www.ciarb.org](http://www.ciarb.org)

The Office of the Small Business Commissioner was set up under the Enterprise Act 2016 as part of a package of measures to tackle late payment and unfavourable payment practices in the private sector.

Tel: (0121) 695 7770

Website: [www.smallbusinesscommissioner.gov.uk](http://www.smallbusinesscommissioner.gov.uk)

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