



SMALL DEBT

Someone owes you money. You have given them time to pay, and chased them repeatedly. They have not paid. It's too much for you to write it off as a bad debt. You feel you have to resort to the court to get the money.

You're unsure about the court procedure. You feel that you may need a solicitor. But, because the sum of money isn't over £10,000, the court will not make the debtor pay your legal fees as well. You will be left to foot that bill.

You may get the money back, but it will be swallowed up by legal fees. Or, worse still, you don't get the money back but have to pay the legal fees anyway. It would be better if you could make the claim yourself. This guide is for you.

This guide applies only to England & Wales. There are different procedures in Scotland and Northern Ireland.

STEP ONE – BEFORE YOU START YOUR CLAIM

- > You cannot go to court immediately. You must make a reasonable attempt to recover the debt before you involve the court. If you do not, the court may penalise you. You may not be able to recover all of your money.
- > The standards of what is 'reasonable' are set out in Pre-Action Protocols ('PAPs') attached to the CPR. The court will look at those to decide if you made a reasonable attempt. There is no specific pre-action protocol for debt recovery claims. Instead, there is general guidance.
- > You will no doubt have sent an invoice or some other written claim and chased it a few times before you resorted to this guide. Part of the debt may even have been paid. We recommend a final push for payment with a threat of court proceedings if not paid.

In order to have made a reasonable attempt, we suggest you should:

- Set out your claim in writing to the debtor
- State the amount owed and what it is for
- Allow a reasonable further and final period of time for payment to be made
- State that court proceedings will be started if payment is not made
- Head it 'Final Demand'
- Attach relevant documents, like the original invoice
- When the deadline is close, try telephoning the debtor to ensure the letter was received and find out if payment will be made

Keep a diary of everything that you do (including telephone calls) as well as copies of any letters/emails/texts sent or received.



If your employees are non UK nationals you will need to go through the immigration visa process for them to work legally in the UK, which our immigration team can assist with.

STEP TWO – STARTING THE CLAIM

If the deadline on the final demand passes without payment or adequate response, it is time to go to court.

Be sure that you are not too late to make a claim at court. There are time limits. The time limit to make a debt claim is usually six years from the original deadline for payment.

If you are later than that, it is unlikely the court can help you. The defendant is likely to oppose the claim on 'limitation' grounds, and the court will not allow it to proceed further.

TWO WAYS OF STARTING A CLAIM

First, you could complete a claim form and send it to CCMCC with a cheque for the court fee.

Second, you could make your claim online using MCOL at www.moneyclaim.gov.uk. You will need to register. You can pay the court fees online by credit or debit card. Court fees are usually less when paid online via this service. MCOL is largely self-explanatory, and this guide does not address it further.

Instead, this guide deals with making a claim via CCMCC.

> **Court fees:**

Court fees tend to increase each year. The court fee that you pay to start the claim is generally known as the 'issue fee' because it is the fee paid to enable the court to issue (i.e. put its seal on and send out the proceedings). The amount is variable, depending on the amount of money you are claiming. It goes up in brackets. In order to find out the correct fee, it is best to refer to the latest Civil Proceedings Fees Order. For year 2015 please visit <http://www.legislation.gov.uk/ukdsi/2015/9780111127490> for more information

> **Claim form:**

If you make your claim via CCMCC, you will need to complete a claim form. You can download a copy here: <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>. You need a Form N1: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n001-eng.pdf>.

You can complete the form online, but you will not be able to save it. If you happen to have software that allows you to edit PDF files, you can download it and complete it using that software in your own time and save a copy. You can handwrite the form as long as it is legible.

You will need to complete the name and address of you and the debtor at the top. If the claim involves individuals, include titles such as Mr, Mrs, Miss etc. If the claim involves companies, state the company's name in full, e.g. Taylor Rose Solicitors Limited.

Avoid abbreviations. The names you give will become the names of the claimant and the defendant in the court proceedings, and they will be the name by which the case is known, e.g. 'Taylor Rose Solicitors Limited v Another LLP'.



At the top right, you must state the court name. Say In the 'County Court at Northampton (CCMCC)'. Near the bottom of the page, you must specify the County Court hearing centre you prefer to attend if there is a hearing. Give the name of the town nearest to you.

If you want to be sure that there is a County Court hearing centre or a Civil Justice Centre there, you can check here: <https://courtribunalfinder.service.gov.uk/>.

- > On the first page, you must complete the 'Brief details of the claim'. We suggest 'This is a claim for an unpaid debt of £[amount] for [state goods or services] that fell due on [date].'
- > You must also state the value of the claim. You can simply write the amount of the debt here.
- > At the bottom right of the page, you must write that amount again plus any interest and in the box below the court fee you are paying. Leave 'Legal Representatives costs' blank. Put the total at the bottom.
- > At the bottom left, write again the debtor's name and address.

Over the page is the space for the particulars of claim. Here you must set out the facts. We recommend this structure:

1. The claimant is... [state the type of business you are in, or the capacity in which you contracted or traded with the defendant].
2. The defendant is... [state the debtor's type of business, or the capacity in which you contracted or traded with the debtor].
3. On [date], the claimant and the defendant... [set out details of the transaction which gives rise to the debt.]
4. The defendant was due to pay to the claimant the sum of money of £[amount].
5. To date that sum has not been paid. [If there has been partial payment, add a sentence to state how much is still outstanding.]
6. The claimant has allowed a reasonable time and given adequate notice to the defendant in order for payment to be made. The claimant confirms there has been compliance with Sections III and IV of the Practice Direction (Pre-Action Conduct).
7. [If your claim is over £5,000, you can include this paragraph to claim interest] The claimant claims interest on the unpaid sum from the date of [deadline for payment] until the date of payment at the judgment debt rate and/or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
8. AND the claimant claims:
 - a. Damages in the sum of £[amount of debt].
 - b. Interest. [If you kept the paragraph above, otherwise delete]
 - c. Costs.



You then need to complete the Statement of Truth at the bottom of the second page. The Statement of Truth is an important section. If you sign it, knowing some of the facts that you have stated are wrong or untrue, then you will be in contempt of court. Punishments can be serious. That warning aside, much of the Statement of Truth is designed for solicitors to sign.

In the first asterisked section, cross out 'The Claimant believes' and then cross out the second asterisked section. Fill in your details, leave the 'Legal representative' line blank, and sign and date it.

Finally, write your name and address again at the bottom left of the second page.

Print and sign a copy. Send three copies to the court along with the cheque for the court fee and a covering letter.

Keep a copy for your records.

The letter should be as follows:

The Court Manager
County Court Money Claims Centre (CCMCC)
Salford Business Centre
PO Box 527
Salford
M5 0BY
[Date]

Dear Sirs,

Please find enclosed three copies of a new claim form for issue along with a cheque for the court fee in the sum of £[court fee].

Please serve a sealed copy of the claim form on the defendant and send me a sealed copy for my records.

Yours faithfully,

[Name]

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- > The court will acknowledge your claim in due course. It should send you a notice of issue, confirming the date on which the claim form was 'issued' by the court, and how long the debtor has to respond. It may or may not send you a copy of the sealed claim form; processes vary.
 - > The court will send ('serve') a copy of the claim form to the defendant.
 - > Whatever documents you receive back from CCMCC will include your claim number. Note that for future reference; you will need it for subsequent documents.



STEP THREE – RESPONSE

The best possible scenario is that the defendant does not respond to your claim in time.

The defendant has 14 days from the date on which the claim form is deemed 'served' on him/her/it. That deemed service will be two working days after the claim form is issued by CCMCC.

If there is no response, you can ask the court for default judgment. That is an order for payment of your claim in full, plus court fees and interest, and you win by default.

You make that request by filling in a court form. It is an N225. You can obtain a copy here: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n225-eng.pdf>.

The form is self-explanatory. Once completed, send it to the CCMCC. The court will issue a default judgment. You can skip ahead to Step Six.

However, the debtor may respond within the 14 days. He has various options. He may admit the claim, and promise payment, ask for time to pay, or propose payment by instalments.

You can use the same form N225 in those circumstances. The court will issue judgment on admission. You can skip ahead to Step Six.

He may oppose the claim. To do that he will send an Acknowledgement of Service and a Defence.

As long as the Acknowledgement of Service is sent in time, the Defence can be sent within 28 days of service of the claim form.

You will know if the defendant intends to oppose the claim even if the Defence comes later, because the Acknowledgement of Service has a tick box to indicate that the claim is opposed.

Whatever the defendant sends, it must be both filed at court and served on you. You must allow the defendant the time to file a defence before taking any further action.

If the defendant is opposing your claim, consider the reasons carefully. You must be reasonably confident you can win your claim before you should proceed.

STEP FOUR – DIRECTIONS

If your claim is opposed, the court will ask the claimant and the defendant to complete a directions questionnaire.

The court will send a proposed notice of allocation to the small claims track, which means that the court recognises your claim is a small claim and the small claims procedures should apply.

The directions questionnaire asks for further information to help the court manage the case to conclusion. The court should send you a form, but you can also download a copy here: <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/n180-eng.pdf>.

The small claims directions questionnaire is an N180. The court may send you a N181 by mistake, which is a form for higher value claims.

Download the correct form if the court sends you the wrong one. The form number is always at the

bottom left of the page in small print.

The form is self-explanatory. Once completed, file a copy at CCMCC and send a copy to the debtor. Keep a copy for your records.

The biggest decision to make at this stage is whether you wish to attempt mediation rather than go to a court hearing.

Mediation is less formal, and a mediator will attempt to resolve the differences between the parties by discussions taking place on a set date by telephone. It is a free service provided by the court.

Mediation is more likely to work at this stage rather than before you started your court claim. The debtor now knows you are serious. If you are nervous about going to court or you are open to a compromise, mediation may be a good option for you.



Also, you should bear in mind that the courts and judges take a dim view of parties who unreasonably refuse to consider mediation as a way of resolving their dispute and that a party acting unreasonably may be penalised in costs.

STEP FIVE – SMALL CLAIMS HEARING

The court will send you a notice of the date, time and place for hearing of your claim.

- **Prepare for the hearing before you go.**
Make notes of your key points. Rehearse what you intend to say. Make sure you take all of the documents and records with you. It is often useful to prepare a chronology of key events.
- **The hearing will be before a district judge.**
It will be generally less formal than the hearings dramatized on television. You should dress smartly. Aim to arrive at court 30 minutes before your hearing starts. Once you have passed through security, you must make your presence known to the court usher, who will sign you in. The usher usually sits at a desk near the court room. The court staff will direct you. You should explain to the usher that you are a 'litigant in person' when asked whether you are a solicitor or barrister.
- **The debtor should also attend court, or send a lawyer to represent him.**
If no one attends, your case will be much simpler, but you should be prepared for the possibility of your matter being adjourned to another date.
- **The usher will tell you when to go into the court room.**
It may be announced over a tannoy. Hearings often run late, and you should not enter the court room until the previous hearing has finished. Also, ensure that you have turned off any mobile device before entering the court room.
- **Small claims hearing often take place in the judge's chambers, which means everyone will sit around a table.**
But sometimes they are in proper court rooms. Take a place to the left of the room, or to the right as the judge looks at you. Almost all hearings are in public, which means anyone can come in to observe.
- **When the hearing starts, take your lead from the district judge.**
He will know that you are representing yourself and will try to help you through the process. You will speak first. You will present your case. Essentially, go through your particulars of claim, elaborating on the details. You do not need to say it as formally as it was written. You can use more everyday language, as long as you remain polite. You should not be interrupted by the debtor while speaking. The district judge should ask the debtor to remain quiet and wait his turn. It is not normally necessary to stand up when addressing the district judge, but ask him if you are unsure.
- **The district judge may have questions.**
Try to answer as best as you can. If you need to check some paperwork, say so and take a moment to check before answering. When speaking, always speaking to the district judge rather than the debtor.
- **The debtor then gets a chance to present his defence.**
Do not interrupt. Make notes on any points you disagree with. Once the debtor has spoken, you will have a chance to make any further points. Once you have done that, the district judge will decide the case. He should explain his decision and tell you what order he is going to make. That order will be typed up by the court staff and posted to you in due course.



If you win, not only will the court make an order for the debt to be paid, you can also ask for your expenses. Those are called disbursements. The main ones will be the court fees that you have paid.

You can claim for:

- Court fees;
- Travelling expenses to attend court;
- Loss of earnings for the court date, up to £90; and
- Small claims costs (see rule 45.2 of the CPR - <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part45-fixed-costs>).

It will be helpful if you prepare a list of your expenses in advance to show to the judge and debtor at this stage of the hearing.

If you lose, it is unlikely you will have to pay costs to the debtor but you may have to pay his travelling expenses and loss of earnings of up to £90. You will have at least 14 days to pay.

STEP SIX – ENFORCEMENT

- > Obtaining an order or judgment from the court that the debtor must pay you is often not the end of the story. The debtor can remain as unwilling as before to pay you. You can take steps to enforce payment of the debt.
- > If you are unsure at any step of the process or it becomes too complicated, you can instruct one of the lawyers at Taylor Rose TTKW to act for you, but you will have to pay the fees.
- > With the help of this guide and the support of the court you should be able bring your claim without needing our further help.

*For more information please contact Taylor Rose TTKW on **01733 333 333**.*