

Dispute Resolution Factsheets

Being sued

Receiving a claim

A typical claim against you might start with the other side and you trying to resolve a dispute by exchanging information explaining your own positions. Take advice on how to deal with this phase. There are 'pre-action protocols' for certain types of dispute, such as construction, housing disrepair and personal injury cases, to encourage negotiations and settlement. Failure to follow them can mean you are at a disadvantage if the case goes to court. Alternative dispute resolution can be a possible solution too - see below.

Discussions fail and the other side lodges a claim form at the court. You will be sent ('served with') a claim form, including a response pack.

If a claim is served on you, act promptly and follow the legal formalities in the pack to the letter. You must respond within 14 days to a High Court or county court claim. Otherwise, the other side can get a 'judgment in default' against you - you will have lost even though you may have a defence. (You can apply to file a defence late, but it will cost you time and money.) Your options are:

- Make an offer to settle.
- Admit liability.
- Defend the case.

Take legal advice before deciding anything - it's a good idea to double-check with your lawyers, even if you intend to admit liability, because you may be able to negotiate when and how you pay.

Making an offer to settle

It can make financial sense to offer to settle the claim, even if you believe the other side's case is weak. That's because, if you successfully defend the claim, the court will order the other side to pay some of your legal bill, but not all of it - you will still have to pay part yourself. (How much you are left to pay yourself depends on whether the claim is a Small, Fast or Multi Track claim - see below - and on your conduct.)

That means that, even if you win, you'll be out of pocket. And successfully defending a big or complex claim can end up costing you more than if you'd settled in the first place.

If you lose, it's worse. You usually have to pay not just your own solicitor's bill but some of the other side's legal bill too.

'Part 36' offers to settle

You can make a formal, written, binding offer to settle representing the amount you are prepared to pay to end the matter now, known as a 'Part 36 offer'. The advantage of doing this is that:

- If the other side doesn't accept your offer; and
- goes on to win; but
- the amount they win is less than the amount you offered or paid into court

the court usually says that you don't have to contribute towards any of their solicitors' bills incurred after your offer expires. If you have made your offer early in the case this can significantly reduce the amount you have to pay towards the winner's legal bill. This is a big incentive to the other side to settle.

The offer must contain specific information and has to remain open for 21 days and, if accepted, you must pay within 14 days (unless you agree a longer payment period).

Calculating how much to offer

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Calculating a reasonable offer of settlement in a purely financial claim (eg for breach of contract) is relatively straightforward. Compensation for personal injuries is based on previous awards and professional advice on current rates is essential. Unless the claimant agrees to accept the offer (or an improved offer) before or at the hearing, you will have to defend the case.

Offer 'without prejudice'

If you make an offer on a 'without prejudice' basis during a dispute, it usually means the other side can't use the offer against you in court, eg as evidence that you are admitting part of the claim. But make sure this is clear by using these words at the beginning of any conversation and in any correspondence with the other side and their advisers.

To rely on the 'without prejudice' rule:

- there must be a dispute underway;
- what you say must be part of a genuine attempt at settling the dispute;
- you must not reveal the content of 'without prejudice' negotiations to a third party, or you can forfeit your right to confidentiality.

If in doubt, take advice.

Admitting liability

If you are in the wrong, it is usually best to admit it, after checking with any interested parties, such as your insurers. If you use procedural rules as a delaying tactic, you are likely to end up paying the other side's legal bill because of it.

You may be able to pay by instalments if the other side - or the court - agrees. If you miss any payments, you may be required to pay the whole remaining amount immediately. Take advice.

Defending the claim

Only defend the claim if you have a good legal case, or if the claimant refuses to accept a reasonable offer. You must file a defence within 14 days of receiving the claim form - or 28 days if you file an 'acknowledgment of service' within 14 days saying you are going to defend.

Your defence should state in detail why you dispute the claim, and your own version of events, in full. It is up to the claimant to prove their case, so you should only respond to allegations which have been included in the other side's claim. A common mistake is to answer allegations the other side has previously made, but hasn't actually included in their claim. You can include documentary evidence, such as copies of correspondence.

You can ask for more details of the claim, including specific answers to specific questions. Take advice on how to do this.

Case allocation

If you defend the claim, the case is allocated to one of three tracks:

- Small Claims track (claims of up to £5,000 - although reasonably straightforward claims over £5,000 can be allocated to the small claims track, if the court and both parties agree.)
- Fast track (£5,000 to £25,000)
- Multi track (over £25,000).

The Small Claims and Fast track each use standard, simplified procedures, which mean that you pay a smaller proportion of the other side's legal bill if you lose. It can sometimes be worth admitting part of the claim just to reduce the amount in dispute enough to bring the case into a lower track. Take advice.

Also, in a Small Claims hearing (only), you do not have to attend the hearing, provided you submit written evidence to the court and

a notice of non-attendance (stating that you wish the court to deal with the case in your absence) at least seven days beforehand.

If you are an individual (eg a sole trader), and the claim is for a specific sum (such as a debt), the case is transferred automatically from the other side's local court to your own. Otherwise, the case is heard at the other side's local court - unless you make a successful application to transfer it to your local court.

Losing

You may be able to appeal against a wrong decision but this is more difficult in small claims. You must show that there was a serious irregularity in the proceedings or that the decision contained an error in law.

Judgment in debt claims is noted against your business address on the Register of County Court Judgments. Your credit rating will be affected unless you pay in full within a month and pay the court to delete the entry. Otherwise, the entry stays on for six years. Payments are noted against the entry. Once you have paid in full, you can pay the court a fee to delete the entry.

The directors and officers of a limited company are responsible for complying with the judgment. Non-compliance with a judgment is grounds for winding up your company, if the claim exceeds £750.

Alternative dispute resolution

Sometimes it is possible to agree a dispute resolution procedure with your customers and suppliers by writing it into the contract between you. Or the court may suggest that your case is one that may be suitable for alternative dispute resolution (ADR) anyway.

The main attraction of ADR is its flexibility. You can agree how formal the procedure should be and who should act as the arbitrator or mediator. In this way you can control costs. Disputes can be resolved more quickly than in court. The process can be less confrontational than going to court.

One form of dispute resolution, if the parties agree, is arbitration. This involves using a professional arbitrator to resolve the dispute. Importantly, you can make the arbitrator's decision legally binding. In commercial disputes, however, a full arbitration is rarely used for claims below £20,000, due to the costs involved. The main exception is 'paper arbitrations' (where the arbitrator's decision is based on written evidence that both parties have submitted), which can be used for claims as small as £2,000.

If in doubt, take legal advice.