



It's all in the claim

When your consumer rights are infringed, don't get mad, get even. Use the small claims court or an alternative dispute resolution scheme

When your complaints about hellish holidays or cowboy builders fall on deaf ears, it's tempting to give up. Don't. If you use a small claims court (SCC) or an alternative dispute resolution (ADR) scheme, you can get a healthy sum of money and a good deal of satisfaction.

Last year, 98% of cases taken to an SCC in England and Wales were successful (based on a sample of 26,000 people). The average award was around £1,400. You can claim for anything, provided that

the value of the claim is less than £5,000 in England and Wales, £3,000 in Scotland and £2,000 in Northern Ireland.

ADR options include ombudsmen and arbitrators. It's worth trying an ombudsman first as you can still go to an SCC if you disagree with the ombudsman's ruling.

One of the key differences between ADR schemes and an SCC is that you can sometimes ask for more than £5,000 – in fact, you can claim up to £100,000 through the Financial Ombudsman Service (FOS).

The route you take will depend on the

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issue, the result you want and the level of compensation. It may not be speedy – the FOS deals with most cases within six months and courts took an average of 27 weeks in 2006 (latest figures).

Before you use an SCC or ADR, you should get advice – use Which? Legal Service (see p20) or charities such as Citizens Advice.

You also need to make sure that the person or company you're claiming against can pay; or you may not get back any money awarded. But whichever route you pick, it's better than grinning and bearing it.

Small claims courts

Don't be put off by the idea of taking legal action – it's easier than you think

An SCC isn't as intimidating as you may think. Both sides set out their cases and a judge makes a ruling (see 'How small claims courts work', opposite). You don't need a lawyer, though it helps to take some

legal advice. You're also not responsible for legal costs your opponent could have if you lose, unless you are judged to have behaved unreasonably or your case had no merit. Visit www.which.co.uk/scc for more.

UPS AND DOWNS OF SMALL CLAIMS COURTS

Judge for yourself whether SCCs would work for you

Pros

- You can talk to the judge. People often value the chance to tell their story and it can increase the amount you're awarded.
- The judge makes a ruling that's legally binding, so you get the award provided that the defendant can pay.
- Companies may be willing to settle cases out of court.
- It's quicker and simpler than other parts of the court system.

Cons

- You can usually only claim for financial loss, not disappointment, though there may be exceptions such as holidays and weddings.
- You can generally only win financial compensation.
- You have to pay (see 'How small claims courts work', opposite).
- Public speaking can be intimidating.
- A company may still use a lawyer but it may not be in your interests to do so.

WORDS OF WISDOM

Advice from those who've been through it

Ferry bad news

When their ferry from Bilbao was cancelled, Max Morrison, 64, and his wife ended up having to drive across France to catch a ferry from Calais. They were awarded £401.12 of compensation in a small claims court.

Max's advice: 'Demand the company disclose all evidence. I asked for letters, emails, minutes of meetings, copies of the ship's log and the ship's repair documents.'

No thanks for the memory

Les Pilkington, 62, from South Manchester found his computer had a different sort of memory from the kind that the company said it had. He was awarded £503 by a small claims court.

Les's advice: 'Take some kind of legal advice. Also, don't be intimidated if you're dealing with a big organisation that has a legal department. If you are in the right, justice will prevail.'

NOT FIT FOR A KING-SIZE

Mark Williams *IT consultant*

Mark got £394 from MFI simply by filing his claim. The furniture company had used its instore system to design a bedroom for Mark in 2005. It didn't fit. MFI suggested he leave parts out or cut them down but wouldn't refund any money.

Mark wrote several letters but he didn't get a reply. Eventually, MFI did come to see the room but no refund was offered. Finally, he wrote a letter threatening to take it to court, but got no response.

'It was quite easy to file the claim, though I found it fiddly to fill out three copies of the forms. You could avoid this by claiming online, but I wanted to say more than I could on the website,' Mark said.

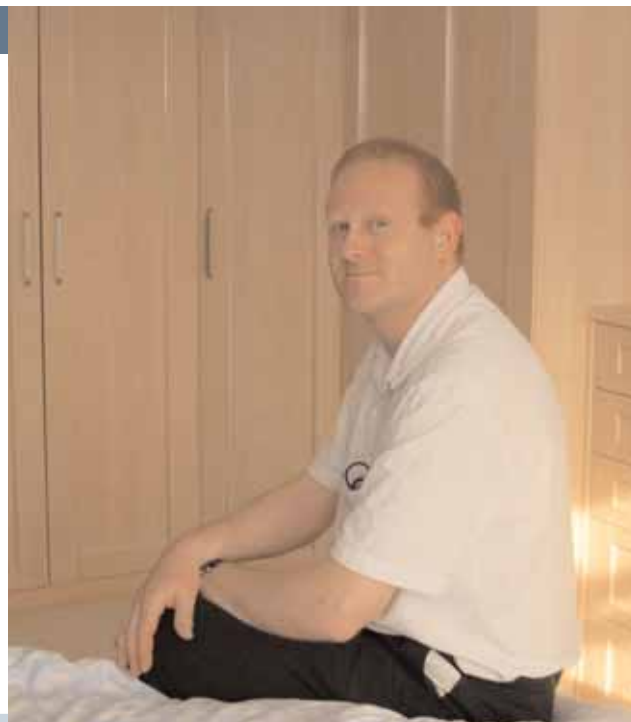
The case didn't reach court as

once MFI knew of his claim, it refunded the amount he'd asked for – a third of the cost of the bedroom. 'I'm pleased with the result, but I would rather have had a bedroom that fitted,' he said.

An MFI spokesman said: 'MFI apologises for any inconvenience caused. Since 2005, our customer service procedures have been overhauled and we ensure that enquiries are dealt with promptly.'

Solicitor and deputy district judge Mark Wagner says:

'Mark did the right thing by trying to settle the complaint with the company first and then giving it a further and final chance before taking it to court.'



HOW SMALL CLAIMS COURTS WORK

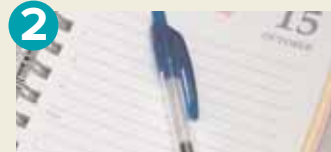
We explain the process across the UK including the various costs

1



Try sending a final letter before taking action, but once you've reached a deadlock, submit your claim form at www.moneyclaim.gov.uk (England and Wales), www.courtsni.gov.uk (Northern Ireland) or your local court. In Scotland, you can't submit forms online; try www.scotcourts.gov.uk for guidance.

2



The defendant is generally told about your claim by the court. If they disagree, they must act as follows:

England and Wales The defendant must send a defence

within 14 days, or acknowledge it within 14 days and send a defence 14 days later.

Northern Ireland The defendant (known as a respondent) must reply within 30 days.

Scotland The defendant must send a written response seven days before the initial hearing (about six weeks after the summons is lodged).

3



England and Wales The court will send the defence and an allocation questionnaire to you. The court uses this to decide which way to deal with the case. If you're claiming less than £5,000 it is very likely to be heard in an SCC.

Northern Ireland There is no allocation questionnaire or initial hearing.

Scotland There is an initial hearing to see if the matter can be settled and to agree what is being contested, but no evidence is given.

4



England and Wales The court decides a hearing date. You normally send your evidence 14 days before this to the court and the defendant. You should receive their papers as well.

Northern Ireland You only need to send expert evidence, such as a surveyor's report about building work.

Scotland As in England and Wales. The hearing referred to is the main hearing not the one mentioned in step three.

5



The hearing takes place. If you win, you may receive expenses on top of the award but generally not solicitor's fees.

England and Wales Expenses include court fees and up to £50 a day for loss of earnings and travel.

Northern Ireland You can claim only the court fee as costs.

Scotland You can claim for your court fee, loss of wages and travel up to a capped amount.

Cost of starting a claim

England and Wales £30 to £108 (£25 to £100 online), depending on the size of the claim, plus £35 for the questionnaire if the claim is for £1,500 to £5,000 and a £25 to £300 hearing fee, depending on the size of the claim.

Northern Ireland £30 to £100, depending on the size of the claim.

Scotland £8 (for claims of less than £50) and £44 (claims up to £3,000).

Top tips



Solicitor and deputy district judge Mark Wagner reveals the best way to a successful claim

■ **Last resort** The judge will be sympathetic if

you've tried to work out the problems first. Going to court should be seen as the last resort.

■ **Know the law** Make sure that you have a proper case. One of the most frustrating aspects for judges is a case that's started but can't go anywhere.

■ **Follow any court order** For instance, if you don't send your evidence to the defendant in advance, the case may not proceed and you may have to pay costs.

■ **Be clear** Tell your story as clearly as you can. Try not to include anything irrelevant and always try to answer questions with a yes or no. Don't speculate.

■ **Best behaviour** A judge is more likely to help you if you act politely.

CAN'T PAY, WONT PAY

What do you do if your award payment isn't forthcoming?

In England and Wales, you can ask the court to help you get the money back. You may have to pay a fee for this, and while you can add it to the money owed, the court won't refund you if you don't get your money back. The court has several options, such as using bailiffs or deducting money from the defendant's wages. In Scotland, you can employ a sheriff officer to do this, but you will need to pay. In Northern Ireland, you pay a fee to the Enforcement of Judgments Office, which collects the money for you.



Contacts

Association of British Travel Agents
020 7637 2444; www.abta.com

Citizens Advice www.citizensadvice.org.uk

Claiming Online www.moneyclaim.gov.uk

Community Legal Advice www.clsdirect.org.uk

Financial Ombudsman Service 020 7964 0500
www.financial-ombudsman.org.uk

HM Courts Service
www.hmcourts-service.gov.uk

Northern Ireland Court Service www.courtsni.gov.uk

Removals Ombudsman
www.removalsombudsman.org.uk

Scottish Courts www.scotcourts.gov.uk

WHICH? LEGAL SERVICE

Saving you a fortune on legal costs

Which? Legal Service (W?LS) is here to help you protect your rights. W?LS offers expert telephone legal advice from our team of experienced qualified solicitors and barristers. W?LS will guide you step-by-step through the legal process with practical and jargon-free legal advice on a range of topics. For more information call 01992 822828.

Ombudsman services

From financial services to problems with removal firms, ombudsmen can help

You should use an ombudsman as your first resort as you can still go to court if you aren't successful.

Ombudsmen take two main forms. They can be statutory bodies, such as the FOS, which the government establishes to handle complaints about an industry and which cover all relevant companies. Or they can be optional and set up by the industry. For instance, they can be connected to a trade body, such as the Removal Industry Ombudsman.

For many industries you can use the ombudsman only if the company belongs to an ombudsman scheme. Check the company website; if it belongs to a trade body, this may have a formal redress scheme. Some industries have more than one scheme, so check who to complain to.

To start a claim, you send evidence to back up your story and the person you're claiming from does the same. An ombudsman then makes a decision. Visit www.which.co.uk/ombudsmen for more.

HOW TO CHOOSE

Judge if ombudsmen are right for you

Pros

- You may be able to claim for disappointment and distress.
- You don't have to speak in public or attend a hearing, so it can be less stressful.
- Ombudsmen are free to use.
- You can still use the small claims court if you disagree with the result.
- You may be able to claim more than £5,000.
- You can get a variety of outcomes, such as an apology and repairs.

Cons

- You don't get the chance to explain your story, in your own words, before a judge.
- You may not get a legally binding decision, so it can be harder to enforce.

WORDS OF WISDOM

Advice from those who know Net gains

Otelo awarded Sanni Kruger, 53, from Bristol, £50 when her broadband was cut off.

Sanni's advice: 'When you deal with the company, stay calm. Also keep a diary of events.'

Slow progress

Jack Knight, 48, from West Byfleet, complained about his mortgage provider to the FOS but settled before a decision was made.

Jack's advice: 'Don't expect anything to happen fast. After two months of hearing nothing, we got a letter from the FOS apologising that they were busy. Four months later, we received another.'



BEATING BAD ADVICE

Graham Salmon 77, retired

Graham Salmon was awarded nearly £30,000 by the Financial Ombudsman Service (FOS) after he was given bad advice by an independent financial adviser.

Graham asked the financial adviser for low-risk investments but the one he ended up with was anything but. He lost £16,000.

He tried to resolve the case with the company but without success. He then sent his complaint to the FOS.

He found the process fairly straightforward but lengthy – it took about a year to resolve the complaint. Graham says: 'The financial adviser kept trying to put obstacles in the way but the FOS dealt with it purely on the facts. I was pleased with the result as it more than put me back to where I'd started.'

WHICH? BOOKS OFFER

Use the law to your advantage

Avoid costly legal disputes with our practical guide to the law: *Making a Civil Claim*. The book covers topics such as legal aid and court appearances in plain English.

To order at the special price of £9.99 including free p&p (normal price £10.99), please call 01903 828557 and quote ISBN 978 1 84490 037 4 and CCW0708.



Arbitration schemes

ADR schemes are a last resort, but you can still be successful

Arbitration is generally connected to trade bodies such as Abta, the travel association. You send letters and photos that back up your case, the defendant does the same and an arbitrator makes a decision. Which? Legal Service usually recommends

you use an arbitration scheme only if there isn't an ombudsman or SCC available. This is because you generally can't go to court afterwards if you disagree with the result, as well as having to pay to use the scheme. Visit www.which.co.uk/arbitration for more.

HOW TO CHOOSE

Judge if arbitration is right for you**Pros**

- You don't have to attend a hearing, so it can be less stressful.
- You may be able to claim more than you could in a small claims court.
- You can get a variety of outcomes, such as an apology or repairs.

Cons

- You don't get the chance to explain your story, in your own words, before a judge.
- You can only use the arbitrator if a company is signed to a particular scheme.
- If you don't like the decision you generally can't go to court afterwards
- You have to pay to use them. For instance Abta charges £72.85 to £164.50, depending on the claim.

WORDS OF WISDOM

Advice from those in the know**Main course for concern**

Malcolm Stacey, from Pembrokeshire, made a successful claim to Abta after he found there was no vegetarian food on his holiday. He was awarded nearly half the cost of the holiday.

Malcolm's advice: 'I had nine months to submit the case, which seems a long time, but gathering evidence can take forever. If I did it again I wouldn't worry as much about dotting the i's and crossing the t's. Credit the arbitrator with common sense.'

A long haul

Peter St John Tubbs, from Bournemouth, complained to Abta about his holiday.

Peter's advice: 'I think the combination of having to pay a fee and the fact that the process is so protracted is designed to make you want to give up.'

NO FLIGHTS? FIGHT FOR YOUR RIGHTS

Alan and Kathleen Fraser 62 and 60, teacher and shop assistant

The Frasers were awarded £550 through Abta's chosen arbitration scheme, Independent Dispute Resolution Services, after a holiday firm failed to confirm their flights for a trip to Egypt.

The couple got there eventually, but the agent wasn't sure what internal flights it could arrange in Egypt or how it would get them home. Alan spent a lot of time sorting it out and they had to catch a flight home a day early. Alan wrote and asked for compensation.

The firm offered him

£200 and then £400. He rejected both and went to Abta. Alan says: 'It was fairly straightforward making the claim but it took a long time.'

Mark Wagner says :

'You generally can't claim for mental distress in the SCC. But bad holidays are an exception. If I had judged this, I would have awarded damages of £167.80 – the equivalent of one day's holiday. I'd also have awarded £500 for disappointment and distress – a total of £667.80.'

