

# Business Disputes in the Small Claims Track

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From time to time most businesses will find themselves in a legal dispute, be it with a customer, supplier or another third party. Disputes, when they rise, can be an unhelpful and costly distraction, diverting resources and attention away from the business's main activities. Unfortunately, there will be occasions when other means of resolving such disputes (for example, mediation) fail and businesses may then have to consider court proceedings.

This article looks at businesses that are contemplating bringing a claim in the so-called "small claims track" of the county court.

A "small claim" is defined as any claim which has a financial value of not more than £10,000 (with certain exceptions, for example in relation to personal injury claims). If you are asking the court for anything other than money, for example an injunction to restrain the defendant from doing something, your claim is not appropriate for the small claims track.

An important feature of the small claims track is that the parties generally cannot recover their legal costs from the opposing party – in other words, each party generally bears its own costs - therefore there is less risk to the parties should they lose. Another feature is that cases will be dealt with more quickly than in the other case management tracks (the fast track and the multi-track).

Although Wall James Chappell does advise clients in relation to disputes suitable for the small claims track, we rarely run cases allocated to the small claims track through to trial because it is simply not economic to do so. Below are some points that you might consider before taking action.

## *Who are you claiming against?*

Before filing court papers, you must make sure that you sue the right party or parties. As an example, companies often have trading names, in which case you should sue against the company's official legal name, not the name it trades under. As a second example, although you may have been dealing with an individual, you should consider whether that individual dealt with you in his or her capacity as a director of a company, and therefore whether it is the company that is the proper defendant as opposed to the individual.

## *What are you trying to recover?*

You must consider whether the remedy that you seek from the defendant is capable of being dealt with in the small claims track. The small claims track will only deal with claims for money, so if you seek some other remedy, the small claims track will probably not be appropriate.

You also need to consider what your actual losses are. For instance, where your business has provided services to a company and then rendered a VAT invoice for those services that is unpaid, the VAT element of that invoice should be claimed from the defendant as well. However, if you entered into a contract to provide services but the other party to that contract then withdrew, so that you could not provide the services, then your claim would be for loss of profits alone.

## *When should you commence court proceedings?*

Court proceedings (whether in the small claims track or one of the other tracks) should be used as a last resort (as long as you observe any limitation deadlines, in other words deadlines within which any court proceedings must be commenced). The court would always expect a potential claimant to set out its claim in writing and allow the proposed defendant the opportunity to consider the claim and respond, before

commencing court proceedings. In many cases there will be what is called a pre-action protocol which must be followed before the commencement of a claim.

*Where should you commence your claim?*

The courts offer a service called *Money Claims Online* that allows you to commence a claim on the internet. The court fee for starting claims through Money Claim Online is less than the paper-based version. Alternatively you can simply issue the proceedings on paper out of the county court.

*How do you commence your claim?*

To begin a claim, you must obtain a Claim Form from the Ministry of Justice website or from your local county court. This form provides you with details of where to send the claim and where to find details on court fees that will need to be paid when the form is filed at court.

*Nature of your claim*

The court also requires you to set out, in a section of the Claim Form called the Particulars of Claim, the basis on which you say the defendant owes you money. When completing this section, remember that the court has no prior knowledge of your business, or the dispute in question, and therefore is entirely reliant on the Particulars of Claim. Setting out your claim in a logical and coherent manner may well improve your chances of success. For example, if you believe that there was a contract for you to provide services to the defendant, set out the details of how that contract was formed, which terms of the contract you seek to rely on, how you believe you have complied with your obligations under the contract and how the defendant has not complied with its obligations. It is not enough just to say that the defendant has not paid your invoice – you need to say why he should pay it.

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