



*Self-Help Kit*

# Small Claims

Guidance Manual

The contents of this Manual have been approved by  
Veronica Newman, barrister



This is an excerpt from Lawpack's *Small Claims Kit*.

To find out how easy it is to make and win a small claim through the county court, [click here](#).

## Important Facts about this Lawpack Kit

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This Lawpack Kit contains authoritative advice, instruction and the necessary forms for making a small claim.

This Lawpack Kit is only for people wishing to file a small claim in England or Wales. It is not suitable for Scotland or Northern Ireland.

This Lawpack Kit is sold with the understanding that the publisher, author and retailer are not engaged in rendering legal services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

As with any legal matter, common sense should determine whether you need the assistance of a solicitor rather than relying solely on the information and forms in this Lawpack Kit.

We strongly urge you to consult a solicitor if:

- substantial amounts of money are involved,
- you do not understand the instructions or are uncertain how to complete and use a form correctly, or
- what you want to do is not precisely covered by the forms provided.

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## Completed examples of loose-leaf forms contained in this Kit and on the free CD:

• Claim Form N1	45
• Certificate of Service Form N215	49
• Request for Judgment and Reply to Admission Form N225	55
• Request for Warrant of Execution Form N323	61
• Application Notice Form N244	62
• Application for Order that Debtor Attend Court for Questioning Form N316	64
• Application for Third Party Debt Order Form N349	66

## Completed examples of loose-leaf forms sent by the Court – not included in this Kit:

• Notes for Claimant N1A	47
• Defendant's Reply Form N9A (Admission)	51
• Defendant's Reply Form N9B (Defence)	53
• Allocation Questionnaire Form N150	56

## Who can bring a claim?

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If you are making a claim you are the claimant. The party you are suing is the defendant. There can be multiple claimants and multiple defendants.

Any individual over the age of 18 can make a claim. A young person ('minor') under the age of 18 can only claim on his or her own behalf for unpaid wages. A minor can file a claim through a guardian or a parent. Always state your full name, do not use initials.

You may, as a business owner or operator, also make a claim.

- If you are a firm, then make a claim as a firm using its name, followed by the words 'a firm'. You would then list the address of the firm. Example: Lawpack Publishing, a firm, 76-89 Alscot Road, London, SE1.
- If you are a limited company use its name designation 'limited company' and either its trading address or the address of its registered office. Example: Lawpack Publishing Limited, a limited company, 76-89 Alscot Road, London, SE1.
- If you are a person doing business under another name, use your own name followed by the words 'trading as', and the address of the business. Example: John Smith trading as Lawpack Publishing, 76-89 Alscot Road, London, SE1.

## Who can be sued?

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You can sue just about anyone.

Always take care to consider who you name on the summons. If you get the wrong party, then the claim may be struck out and costs ordered against you. If in doubt seek advice from the court, or a Citizens' Advice Bureau.

The following are general rules on whom you can sue.

### Suing one person

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If you are suing an individual, name the individual using the most complete name that you have for that person.

### Suing two or more people

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If you are suing more than one person on a claim arising from the same incident, list and serve each of them. For example, if you are suing John Doe and John Smith for the £1,000 they borrowed from you, list them as follows: 'John Doe and John Smith.' This is also required for a husband and wife. Do not list them as Mr. and Mrs. Smith. Additionally, each defendant must be served separately. Service of process will be discussed in a later section.

If you are suing more than one person on two claims, you must sue each one in a separate action under the Small Claims Track.

## Suing a sole trader

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If you are suing a sole trader, list the name of the owner and the name of the business. This would be as follows: 'Jo Bloggs trading as ABC Painting'.

Make sure you know who the true owner of the business is before you sue. A judgment against an incorrect defendant is worth very little.

## Suing a firm

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If you are suing a partnership, you have a choice of either suing the individual partners or the partnership itself.

The advantages of suing the partnership are that:

- service is easier and the proceedings are simpler;
- judgment can be enforced without special permission of the judge (i.e. without leave) against partnership property;
- judgment can be enforced without leave against the personal property of any person who was identified as a partner in the proceedings.

All partners are individually liable for all the debts of the business, so you need not specify which partner you dealt with particularly.

List the partnership as follows: 'ABC Painting, a firm' followed by the address. Try to get a judgment against more than one person so if you have trouble collecting from one you may have others to collect from.

## Suing a limited company

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If you are suing a limited company, list its full name and address. Example: 'ABC Painting, Ltd. a limited company, 76-89 Alscot Road, London, SE1'.

A limited company is considered by English law to be a person (it has a 'corporate personality'). This means that you can sue and enforce a judgment against a company. Do not sue the owners of the limited company or its managing director individually unless you have a personal claim against them that is separate from their role as part of the limited company. Most of the time people who own or operate a limited company are usually not liable for its corporate debts. This is known as limited liability and is what makes forming a limited company so important.

## Suing a club or association

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If you are suing a club or association, such as a football or rugby club, you must list the names of the officers of the club or association. For example, 'Deborah Brown in her capacity as Chairman of the Dowl Association of Junior Swimmers' and 'Ian Trot in his capacity as Secretary of the Dowl Association of Junior Swimmers'. You would also need to obtain the home addresses of the officers, as they have to be served by the court at their home addresses.

## Suing a child

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While anyone under 18 cannot sue by themselves (except for wages), they can be sued. If your defendant is a child, i.e. under 18, you should specify this as follows: 'James Smith, a child by [*insert name of parent currently responsible for him/her*] ... his/her litigation friend'. It would be wise to check whether the parents have legal responsibility for the acts or debts of the child. If they do, they should also be named as defendants.

## How much can you sue for?

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You cannot sue for more than £5,000 using the Small Claims Track. If your claim exceeds that amount you must either reduce your claim or else bring your action in another track. You are not allowed just to divide a claim that is over the £5,000 limit into two or more claims so that each is within the limit. For example, X lent Y £6,000. Y was to repay X in two instalments, each for £3,000. X cannot argue that there were two separate contracts. The loan was one transaction; X may not have two claims heard in the court using the Small Claims Track.

## How do you calculate the size of your claim?

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When in doubt, overestimate slightly. If you are unsure as to the exact amount of your claim, always issue your action for damages a little higher than you believe they are worth. This is because the judge has the power to award you less than you request, but will never award you more.

If you find yourself in court and realise you have asked for too little, request that the judge allow you to amend your claim. If the judge allows this, your case may be continued at a later date.

It is easy to work out the exact amount you are entitled to. The following are some examples of how the exact amount of a claim may be calculated:

## Contract disputes

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To arrive at the exact figure for a contract claim, work out the difference between the amount you were supposed to receive under the contract and what you actually received. For example, if 'A' was to paint 'B's house for £1,000, and 'B' only paid 'A' £750, 'A' has a claim against 'B' for £250.

## Interest

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You can claim interest on all moneys which are due to you whether your claim is for a fixed amount or damages to be assessed.

## Interest rates

- If you have a contract which specifies how interest is charged then you can rely upon this.
- Otherwise all debts carry interest at the judgment rate which is currently eight per cent per annum.
- Damages, once assessed, are awarded interest at a rate the judge decides is reasonable.

## How interest is calculated

- Claim from the date the debt became due. If it became due over a period of time then you can either stagger it or simply calculate on the whole sum from the date the last amount became due.
- Interest continues to be due up until the date of your judgment or until payment is made if this is before any judgment. It does not carry on after judgment unless the amount of the judgment is over £5,000. For example, Stephanie owes Jane £800 for making a wedding dress. Jane's bill is dated 26th February 2005. Stephanie fails to pay and makes weak excuses until Jane's patience is exhausted. Jane completes the summons form N1 on 25th May 2005. Jane claims interest at 8 per cent per annum under the County Courts Act 1984. Jane needs to work out the daily rate of interest on the debt. She starts by working out the annual interest by multiplying £800 by 8 and dividing by 100.

$$800 \times 8 = 6,400$$

$$6,400 \text{ divided by } 100 = 64$$

Jane works out the daily rate of interest:

$$64 \text{ divided by } 365 \text{ days} = 0.175$$

round it up to 18 pence per day.

There are 89 days between the date of Jane's bill and the date she completes the N1;  $89 \times 18$  pence per day is £16.02. Therefore Jane needs to claim £800, plus £16.02 from the date of the debt being due until the date she completes her N1, and a further 18 pence for each day after the date on the N1 until the date of judgment or payment, whichever is sooner.

Note: The amount of interest forms part of the £5,000 small claims limit. So if you were claiming £4,850 with interest of £225 it would take you outside the limit. But you could still limit your claim to £5,000.

Also make sure that your damages include only the amount of money you are owed. In other words, do not try to collect money in court that you have already recovered from someone else.



## Property damage

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The exact amount of your claim for property damage is usually the amount of money it would take to fix the damaged item. For example, if A's car was dented by

B, A would sue B for the amount it would cost to repair it. To be safe, A should get several estimates.

If the cost to repair the damaged item exceeds the value of the item, you may only be entitled to the value of the item. If the cost to fix A's dented car exceeds the market value of A's car before the accident, A may only be entitled to sue B for the market value of the car. This will depend upon other factors such as whether the item is easily replaceable.

If you are only entitled to the fair market value of the item, you must deduct the value of the object after the injury. If the fair market value of A's car is £3,000 and it would cost £3,200 to repair the dent, A may sue for £3,000 (the value of the car). However, the value of the car after the dent must be deducted from that amount. If A's car is now worth £500 with the dent, that amount must be deducted from the £3,000 fair market value of A's car. This means A's damages are £2,500.

Think of it this way: if the cost of repair exceeds the value of the object, you are likely to be limited to the fair market value of the object, less the value of the object after damage.

Do not forget though, if the value of the damaged object exceeds the cost of repair, you are entitled to sue for the cost of the repair. If A's car is worth £5,000 and the dent cost £500 to repair, A's claim is for £500.

Be prepared to show the actual value of your property in court. How do you do this? The best way is to get estimates from experts in the field and have these experts come to court and testify. Alternatively, they can put the value of your property in writing. You may also want to check newspaper ads for the prices asked for comparable goods. Proving your case in court will be discussed later.

In summary, to calculate the amount of your claim work out:

1. What the value was of the item before the accident.
2. How much it will cost to repair.
3. What the item is worth now it is damaged.

If 2 is less than 1, claim for 2. If 2 is more than 1, claim for 1 minus 3.



## Damage to clothing

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Claims involving clothing damage are different from other property damage cases because:

1. The Small Claims Track is frequently used in cases involving clothing.
2. Your own items of clothing have little value to anyone else, even if in good condition.

If your damaged clothing was new or almost new, sue for its cost. For example, if your dry-cleaners damaged your new £200 suit, sue for £200.

If your clothing was not new, sue for the percentage of value of the clothing which reflects how worn it was when the damage occurred. For example, your dry-cleaners

damaged your suit which cost £200 two years ago. You have been wearing the suit fairly regularly and feel it would have lasted another two years. Since the suit had lost half of its useable life, you should sue for £100.

## Personal injury cases

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Few personal injury cases go to the Small Claims Court because the amount of the claims are usually much higher than the £1,000 small claims limit for personal injury. However, small personal injury cases do make it to the Small Claims Track.

To work out the exact amount of your personal injury claim, also consider:

1. Out-of-pocket expenses, such as fares to and from hospital appointments.
2. Loss of pay or vacation time for missing work.
3. Damage to property.
4. Pain and suffering (will be assessed by the judge).

Remember, you cannot collect money in court that you have already recovered from someone else. If your employer paid you for the days you missed work, do not expect to recover lost wages, or if you have received any state benefits these must be disclosed and taken into account.

The small claims limits for personal injury cases are different, because it is recognised that they often take more work and involve greater costs to prove the claim, especially so for medical reports, which are largely unrecoverable in small claims.

For this reason a personal injury matter can only be dealt with as a small claim where the total claim is less than £5,000 and of that no more than £1,000 is sought for general damages to your person, for example, if you claimed £2,000 for loss of earnings, £250 for damage to your clothing and £1,000 for a broken leg.

Be prepared to provide the judge with receipts as proof of your out-of-pocket expenses, such as medical bills, fares for visiting hospital, etc.

If you decide to claim over the personal injury limits, there are special rules that apply to personal injury matters and you should consult a Citizens' Advice Bureau or a solicitor.

## Pain and suffering

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Pain and suffering is the discomfort and inconvenience caused as a result of your injury. The court calculates the amount of damages by considering other cases of a similar nature.

## Completing your small claims forms

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It is not difficult to start a claim using the Small Claims Track. You will be shown how to complete the necessary forms in the remainder of this manual.