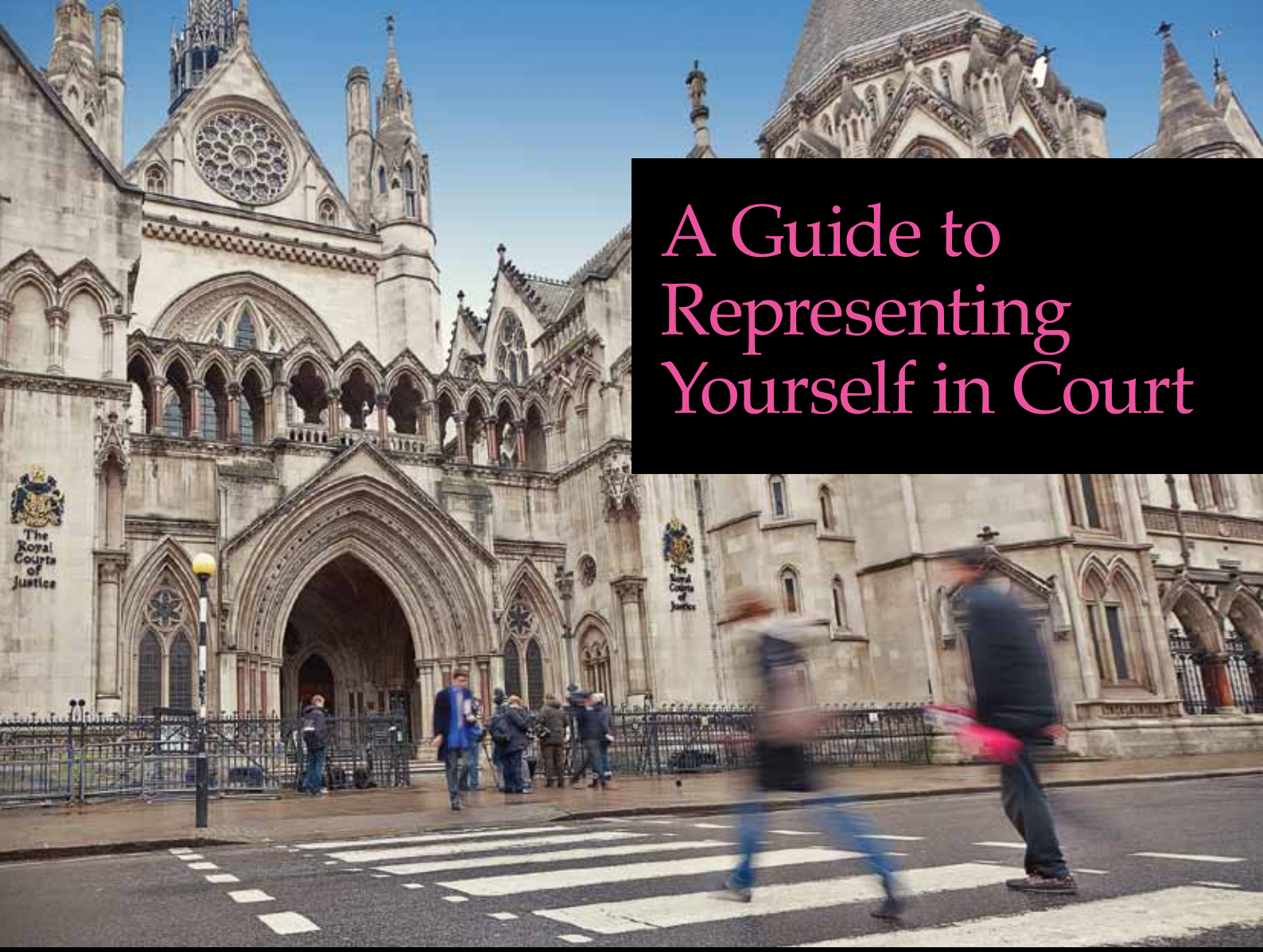
# A Guide to Representing Yourself in Court




The Bar Council

*Integrity. Excellence. Justice.*

# Disclosure

The law can be very complicated. This Guide explains things as clearly and as briefly as possible, but will only give you an overview of what you need to do if you have a civil law legal problem. This means we have had to miss bits out – bits that are likely to affect what the law would say about your own situation. So please do not rely on any of the examples used in this Guide. Instead, before you take any action, try to get advice from a Citizens Advice Bureau, law centre or independent advice agency. If you need help working out who to speak to, check Section 1.

We have also tried to point you in the direction of some other, useful, sources of information, but we are not responsible for their contents.

This Guide is not legal advice. It is intended to help you to find your way around a difficult and complex system. All information was correct at the time of writing (April 2013). Please try to get some professional advice wherever you can.

# Introduction

On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force. It means that fewer people now have access to free legal representation than at any time since legal aid (state funding for legal advice and representation) was introduced. This means that if you have a legal problem there is now more chance that you will have to represent yourself. This Guide is here to help.

The Bar Council represents all barristers in England and Wales. We believe that access to justice matters. Whether people use barristers' services or not, we think we have a responsibility to explain and demystify the legal system to anyone who comes into contact with it. This Guide has been written by barristers, who have lots of experience in all kinds of different courts and understand how the system works.

The number of people who do not qualify for legal aid, but equally cannot afford representation, is growing. These people are called 'litigants-in-person' (LIPs) or 'self-representing litigants' (SRLs). They will have to go to court (to 'litigate') without a lawyer, and will have to represent themselves.

This Guide looks to help 'litigants-in-person' through their legal journey, which can be a very daunting, complicated and expensive experience.

**It is extremely important to be aware at the outset that if you start any legal action against someone else, if you are unsuccessful, you might be liable to pay for their legal costs** (whether you have a lawyer or not). Always bear this in mind from the very beginning.

In this Guide, we deal with how to get help with civil legal problems, like divorce and family problems; housing rights and personal injury. It does not cover criminal law (problems involving the police), which is still covered by legal aid.

The Guide tries to explain unfamiliar legal words and 'jargon' throughout, but there is also a glossary of terms at the end of the Guide to help you. However, the law can be very complex at times, and it is important that you become as familiar as possible with the legal terminology because they are words you will hear and have to deal with throughout your case.

We recommend that you use the first three, general, Sections to familiarise yourself with how the legal process works, how to prepare your case, and if you have to go to court, what you should expect and be aware of. Then go to the relevant part for your case in the final Section (Section 4). If you have a case which does not fall under Section 4, the first three sections will still be helpful. Remember that different areas of law, and different courts, have different procedures. This means that not all the general guidance in the first three Sections will be applicable to all types of case. Try to do as much research as you can, using the resources we suggest in this Guide.

# The Guide will cover:


| | Page |
|---|---|
| Section 1: How to find free or affordable help with your legal problem | 3 |
| Section 2, Part 1: Putting together your case | 9 |
| Section 2, Part 2: Starting and defending a claim | 13 |
| Section 3: Representing yourself in court: On the day | 19 |
| Section 4: Areas of law | 29 |
| 1. Personal injury law | 30 |
| 2. Employment Tribunals | 35 |
| 3. Immigration Tribunals | 38 |
| 4. Family law | 44 |
| 4.1. Property ownership in relationship breakdowns | 49 |
| 5. Public law and Judicial Review | 50 |
| 6. Housing law | 58 |
| 7. Bankruptcy and debt law | 62 |
| Glossary of terms | 67 |


We hope this Guide is useful, and helps you to understand how the justice system should work fairly and openly for everyone who comes into contact with it.

# Section 1: How to find free or affordable help with your legal problem

Many people facing a legal problem feel that they have no one to turn to. Many assume that only the rich can afford to access a lawyer, or those who are accused of committing a criminal offence, who are granted legal aid.

In fact, there are many free sources of legal advice: one-to-one, via the phone and online.

If you have a set amount of savings that you can afford to spend on legal services, many lawyers are now willing to carry out work on a fixed-fee basis. Others may charge by the hour, but can be more cost-effective than you might expect, and we have provided some tips below on free services and how to keep costs down.

Before paying for legal services or approaching a free advice agency, you should establish whether or not you are able to get legal aid (legal services paid for, in full or in part, by the state; sometimes as a loan).

Check if you can get **legal aid**.

Make the most of **free** information, advice and representation.

Make any **money** you do have **go further**.

## Legal aid

The civil law covers most non-criminal legal issues. If you are on a low income and only have limited savings you may be able to get part or all of your legal costs paid by the Government through legal aid.

There are ways of finding out if you are eligible to receive legal aid. This section of the Government website is a useful resource and includes a 'legal aid calculator' which will help you to understand if you can get funding: www.gov.uk/legal-aid/overview. It will ask you a number of questions about your employment and benefits status, the type of case concerned and, if relevant, your income, so make sure you have all the information to hand.

There is more information available on legal aid here: www.justice.gov.uk/legal-aid. If you cannot get legal aid however, this is not the end of the road; there are a wide range of places where you can still find free help and advice.


## Advicenow

Advicenow is an independent website (www.advicenow.org.uk) which provides helpful, easy-to-follow guides to the law and your rights. It covers a wide range of topics, from divorce and benefits to employment and consumer rights. You may find that you can gain most of the advice and information you need for your case on their website. Note also that Advicenow can provide information on welfare benefits, which we haven't covered in this Guide.

## Free legal advice and representation

There are a number of organisations which provide free legal advice (which are usually called 'pro bono' services), both face-to-face and over the phone. These agencies also refer some cases to the Bar Pro Bono Unit and the Free Representation Unit, which find you a barrister or someone to advise you (free of charge). They will help you to prepare any documents you will need to take to court, and speak on your behalf in front of the judge (in legal terms this is called 'representation').

If you have researched your case using Advicenow and other online resources, but need further advice, the 'umbrella' agencies listed below may be able help. For further information on these and other agencies, please see the 'Guide to Pro Bono' (probonouk.net/upload/2012_Guide_to_Pro_Bono.pdf).

**Advice UK**
Advice UK is the UK's largest support network of free, independent advice agencies. Their website provides links to organisations which can assist with and advise upon a wide variety of problems.

Contact: 0300 777 0107
www.adviceuk.org.uk/want-help
mail@adviceuk.org.uk

**Citizens Advice**
Citizens Advice Bureaux (often referred to as CABs) deliver advice services from over 3,500 community locations in England and Wales, run by 382 individual charities.

Contact: 020 7833 2181
www.citizensadvice.org.uk

**Law Centres Network**
Law Centres specialise in social welfare law and offer legal advice, casework and representation to individuals and groups.

Contact: 020 7749 9120
www.lawcentres.org.uk
info@lawcentres.org.uk

## Paying for legal services

If you have some money you have saved up and can put towards legal costs, you may be able to pay for advice from solicitors, barristers or chartered legal executives. A lot of people don't realise that they have legal expenses cover included in their house or car insurance, or if they belong to a union. It is always worth checking if you have such a policy. Some bank accounts also offer this sort of cover. Legal expenses insurance will cover most types of case, including representation in court. It will, however, be subject to a merits test, which is an assessment of whether or not your claim is likely to be successful.

## Who can provide legal advice and representation?

Solicitors have traditionally been the first point of access for people who have a legal problem, but it is now also possible to go directly to barristers and chartered legal executives.

## Barristers

There are over 15,000 barristers in England and Wales, most of whom are self-employed and work in offices known as 'chambers' as independent lawyers. Barristers are specialist lawyers whose services are focused on giving advice and advocacy (which means putting someone's case across either in writing or by speaking in court on their behalf). As mentioned above, traditionally, if you had a legal problem, you would go to a solicitor first, who would then decide whether your case required a barrister's services, and, if so, would 'instruct' them: appoint them to your case to prepare your case and represent you in court. This can still be the best route in many cases but, increasingly, clients are able to go directly to barristers for their legal problem.

Over 5,000 barristers have now undertaken Public Access Training, which means you can go directly to them. This can be more cost-effective than going to a solicitor, because you don't have to pay for the running costs of a law firm. By going to a self-employed barrister, you will only be paying for the work you have asked to be done by the person you have chosen to do it.

You can search for public access barristers by the type of cases they specialise in, called their 'practice area', or geographical area on the Bar Council's website: www.barcouncil.org.uk/publicaccess.

## Solicitors and chartered legal executives

Solicitors are often more generalist lawyers who are usually the first port of call for people with legal problems. Traditionally, solicitors have enlisted the help of a barrister for more specialist advice or to represent their client in court but, just as public access barristers can now do much of the work which solicitors have done in the past, solicitors are also appearing in court on a more regular basis (provided they have done the required training to acquire 'Higher Rights of Audience', which means that they are allowed to speak in court).

If you go to a law firm for legal advice and assistance, some or all of the work may be carried out by a chartered legal executive rather than a solicitor. Their everyday work is similar to that of a solicitor, but a chartered legal executive has taken a vocational route to becoming a lawyer and has specialised in a particular area of law. They can offer a more cost-effective service in some cases.

Most solicitors and chartered legal executives work within law firms. You can search for a firm or solicitor according to geographical and practice area on the Law Society's website: www.lawsociety.org.uk/find-a-solicitor/. You can search for a chartered legal executive on the Chartered Institute of Legal Executives' website: www.cilex.org.uk/about_cilex_lawyers/cilex_lawyers_directory.aspx.

## Keeping costs down

An increasing number of lawyers now charge on a fixed fee basis, outlining at the beginning how much they will charge you, for example, for letter writing, dispute resolution services or representation at a court or Tribunal. This will ensure that you do not receive an unexpectedly large bill when they finish the work.

Some lawyers will agree to a fixed fee for initial advice, or for the whole case if it is relatively simple. For more complicated and lengthy cases, costs are more difficult to predict, and will depend on whether the case goes to a final Hearing.

By all means, 'shop around' for your lawyer. Fees vary according, for example, to the size of the law firm, the seniority of the solicitor and, in the case of barristers, whether or not they are a QC (short for Queen's Counsel, the most senior and able barristers). Generally, the rates charged by law firms outside of London (and outside of the City of London) will be lower. It might be worth telephoning a few lawyers – particularly if you have a fixed cost limit – to find out what sort of work they can do for the price you have in mind. Do remember, however, that without seeing the details of your case, they won't be able to say for sure how much they can do within your cost limit.

Regardless of whether or not your lawyer imposes fixed charges, you can use these tips to keep the costs of your final bill down and keep track of how much you have spent so far.

### 1. Their time is your money

Make sure you know the lawyer's hourly rate as this will determine the final bill. Most law firms charge per six minute unit (or ten per cent of their hourly rate) for a short letter or telephone call. Otherwise, they charge on an hourly basis. If you keep calling your lawyer or emailing them every day, the bill will be much higher, as they will charge for as long as they are working on your case. Make sure you have a clear idea of everything you want to talk to them about before you call or email them.

The lawyer should send you a 'Client Care Letter' soon after being instructed, setting out their hourly rate and any other charges, and you need to read the small print carefully. If the lawyer requires information from you on something to do with your case, respond as soon as possible with all of the information or documents requested. It will cost you more if they have to keep chasing you.

### 2. Cap your costs

If you can only afford a certain amount, you can tell the lawyer not to exceed that limit. The lawyer will then have to go back to you before doing any further work which would take you over your cost limit.

### 3. If you can, settle outside court

In most cases (apart from most family, employment and small claims cases), if you are not receiving legal aid, you may have to pay the other side's costs if you take your case to court and lose. If possible, it makes sense to try to settle outside of court. This means that you come to an agreement with the other side on how to resolve your dispute, without going to court. Often, this means that you will have to compromise.

If your lawyer advises you that your case is weak, don't argue about it and think that you know better. Advice from a friend or from something you read in a newspaper is not as reliable as professional legal advice. If the advice is not what you expected, either drop the matter or get a second opinion (but this will, of course, incur further costs).

### 4. Is 'no win, no fee' right for you?

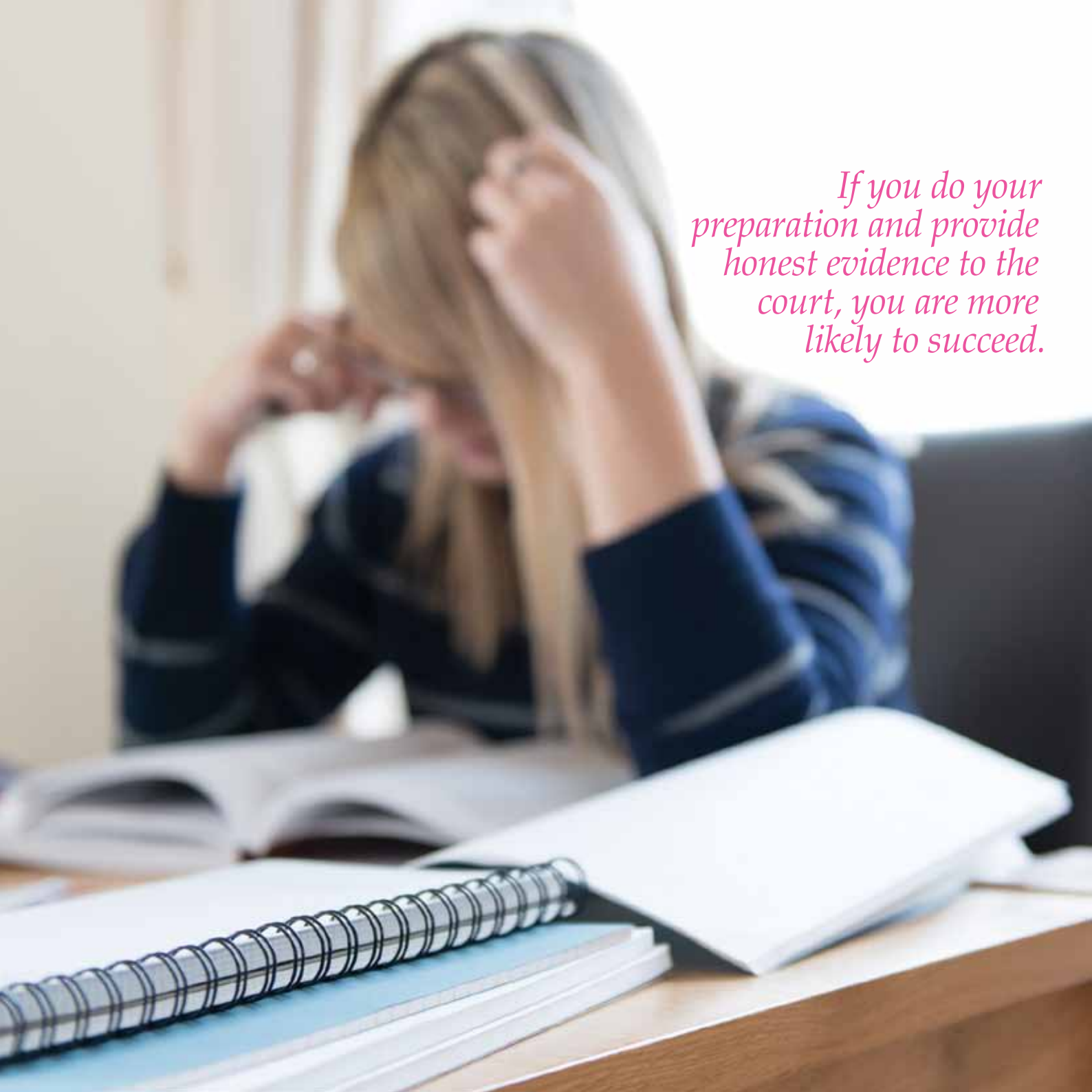
Most personal injury lawyers and some others (for example, employment lawyers) will take cases on a 'no win, no fee' basis. This is called a conditional fee agreement (CFA). Lawyers take these cases on because they receive a bonus on their usual fee (called a 'success fee') if they win, making up for the cases which they lose. From April 2013, the success fee will no longer be payable by the losing side, but will be come out of any damages which you are awarded.

Before entering into a CFA, make sure you understand the terms properly and read the Client Care Letter carefully. Some lawyers will offer a free initial consultation (for example, for half an hour), but this tends to be restricted to less complex cases. They will be reluctant to offer the consultation for free if they have to read a large number of documents in order to understand the case.

### 5. Challenge your final bill if you think it is wrong

If you think that the bill which you receive at the end of your case is incorrect or different from what you agreed, you can challenge it. Most firms will be reasonable about dealing with fair complaints. Check the Client Care Letter for the procedure for challenging your final bill.

*Consider whether you can get legal assistance to deal with your case, especially for the more technical elements. You may be able to obtain advice or representation for free so investigate what options are out there.*



*If you do your preparation and provide honest evidence to the court, you are more likely to succeed.*

# Section 2, Part 1: Putting together your case

Sometimes, even if you have tried to sort out your problem informally, as a last resort, you might have to go to court to resolve it. You should follow the advice in Section 1 and try to get as much advice as you can, whether that is free advice or spending some money on a lawyer. Once you have done that, this section of the Guide is designed to give you an overview of the process of preparing for your case and to highlight some of the important issues you will need to think about before getting started. It will also give you some tips for what you have to do if someone is preparing a case against you.

As an overview of the process, you should make sure to read the relevant part of Section 4 which will give specific information about how to go about your case. Of particular note, immigration cases follow a very different format from that of many others, using different rules of court, terminology, processes, likelihood of settling, and rules of evidence and disclosure.

If you need more information for any cases, there are other Guides available, including from Advicenow, which can be found at: www.advicenow.org.uk/going-to-court/, and throughout this Guide we point to useful websites and law books.

## Preparation is key

You will need to spend time preparing your case. Your first step is to work out what your case is. Has someone done something wrong to you? Did someone fail to finish a service which you had paid them to do? These are the types of questions you should be asking yourself. In a nutshell, what exactly has the other side (your opponent or, in legal terms, 'the other party') done wrong and what do you want to do to fix it?

If you are the one who is starting legal action, you will have to prepare your case and say what it is. This is called 'bringing a claim'. If not, you will be 'served a claim', and you will have to prepare a defence.

If you are the person who is preparing the claim, you will be called the claimant. If the claim is brought against you, you are the defendant, and if you deny whatever is being claimed, you will need to prepare a defence.

If a claim has been issued and served on you, you can either accept the claim against you (admitting that the claim is true, which might mean that you accept you have to compensate the person bringing it) or defend all or part of it. If you wish to defend all or part of the claim you must file a 'defence'. A defence is a document that sets out why you say you are not liable or not at fault when the claimant has stated that you are. If you are filing a defence and believe the claimant owes you something, then you can prepare a claim of your own with your defence. This is called a counterclaim. If you are the claimant and you receive a counterclaim that you do not accept, you must file a defence.

Read the claim, defence or any counterclaim very carefully, and ask yourself what you are trying to say. You have to look closely at the facts and try not to let your emotions get in the way. Ask yourself what someone who was looking at the situation with fresh eyes might think. Try to explain things in a way that they would understand it. Remember that they will not know any of the particular details of your case.

**If, after you have thought about all the facts carefully, you are not sure whether you could convince someone that you were right, you should think about whether it is better to reconsider and not to pursue your case any further.**

## Convincing the judge

Whoever has made the claim in court has to persuade the judge that what they are saying is true. Always be completely honest with the judge and with any officials who you speak to and never lie. There can be very serious consequences if you deliberately lie or even bend the truth. For example, you might think telling a white lie will help your case, but if you are caught lying in court or in official documents, you could be charged with a criminal offence.

In order to persuade a judge in a civil court, you have to convince them 'on the balance of probabilities'. You might be aware that to be guilty of a criminal offence, the accused person has to be guilty 'beyond reasonable doubt'. It is not the same in a civil court. This means that if you are the claimant you only need to persuade the judge that what you are saying is more likely to be true than not true. In percentage terms that means if the judge is 51 per cent sure that what you are saying is true then you will win. If you only satisfy the judge 50 per cent, you will lose.

Also remember that the more serious or far-fetched an allegation the more you will have to convince the court that what you are saying is true.

For example, you are driving your car and you swerve to avoid something that runs out in front of you, causing you to hit a lamp post. If your case is that a tiger, rather than, say, a dog, ran in front of your car the judge will need some convincing that what you are saying is true.

## Evidence

Whether you are bringing or defending a case in court you need to support what you say with evidence. What is evidence? It is information that can prove what you are saying is true. For example:

- What witnesses, who have personal knowledge about relevant facts and events, say. This might include you, if you are a witness
- Documents such as an accident report, a contract, an invoice, bank statements etc
- Physical objects which demonstrate a point about your case (for example if you tore some clothes in an accident, they might be helpful to back up what you have said, or the location of damage on a car), and
- Expert evidence (for example a doctor who can vouch for illness or a surveyor who can say what works are needed to your house).

## What is your case or defence?

If you are bringing a claim, it is important that you work out exactly what you are asking the judge for. You should stick to the facts and try to get straight to the point, using the types of evidence we explained above to show why you are right. If you are defending a claim, you should do the same thing, but in reverse. Why isn't the claim true? What evidence do you have to support your version of events?

Here is an example. A builder agrees to build you a small wall in your garden at a cost of £4,000. You pay £1,000 upfront as a deposit and he builds the wall. When the work is finished, the builder asks for £4,000 and claims you only paid him £500 as a deposit, that the agreed price was £4,500 and he wants the rest of the money. To make matters worse, the wall was badly built and part of it collapses. When you confront him about this he says someone must have backed their car into it. He issues a claim against you. You have to get another builder to rebuild the wall. You defend the claim and bring a claim of your own against the builder (this is called a 'counterclaim'), asking the builder to repay you the £1,000 deposit.

*Decide at the beginning what your position is, and unless the facts change, stick to it.*

**The table below outlines the case:**

| Issue | Questions | Potential evidence |
|---|---|---|
| The contract/ agreement | What did you agree the price would be? | • Do you have a written contract with the builder?<br>• Do you have a written quote from the builder?<br>• Was anyone else present when you made the agreement with the builder? |
| How much was paid? | • How did you pay the builder?<br>• When did you pay the builder?<br>• Where did you pay the builder? | • Did you pay by cheque, credit card, bank transfer or in cash?<br>• Do you have a bank or credit card statement to show this amount being paid?<br>• Do you have a statement showing that you withdrew £1,000 in cash around the time that you paid him?<br>• Was anyone else present who witnessed it? |
| The Wall | • What did it look like when it broke?<br>• Where did it collapse?<br>• Why did it collapse? | • Do you have a photo showing the collapsed wall?<br>• Was it far enough away from the drive, to suggest that the builder's claim that someone reversed into it is far-fetched?<br>• Can another builder tell you why the wall collapsed (expert witness)? For example, did the builder use weak mortar? Was the ground area not prepared properly?<br>• Will a builder write a report for the court saying in his opinion why the wall collapsed? |
| Rebuild | • Who carried out the work?<br>• How much did it cost? | • Do you have a contract or quote from the new builder?<br>• Do you have a receipt showing the amount you paid the new builder? |

## Statements given in court

You should write down what you are going to tell the court in what lawyers call a statement, this is so you remember all the points you wish to make. Always check that the statement covers all the facts that you need to tell the court in order to prove your claim or defence. Make sure they are relevant, that you avoid repeating yourself and get to the point. Also, if a witness is going to give evidence for you, you should ask each witness also to write down what they are going to say in a statement (called a witness statement), and to stick to the point. All statements **must** be truthful and accurate. A statement should say what the witness has seen or heard for themselves, not repeating what you have told them.

Attach the most important documents to your statement. Put page numbers on the documents and refer to them as you go through your statement.

All cases have to keep to strict rules and you will need to be aware of them and follow them. They are called the Civil Procedure Rules (CPR). All civil cases must stick to them. They provide a guide on how that statement should be set out and what information it needs to include. The statement must be signed by the person making the statement and they must confirm that it is truthful. The guidance can be found in: CPR Part 32 (www.justice.gov.uk/courts/procedure-rules/civil/rules/part32).

## 'Directions', including disclosure

The court will set out the steps that each party (the claimant and the defendant) needs to take in an 'Order', which are also known as 'directions'. Orders and directions are, quite simply, what the court tells you to do. They are mandatory and you should always follow them. One of those steps will be 'disclosure', which means you need to let the other side know what documents you have and show them any evidence you will be relying on. Again the CPR sets out what you should do. See Part 31 (www.justice.gov.uk/courts/procedure-rules/civil/rules/part31).

What do you have to disclose? You have to set out in a numbered list all the documents which are relevant to your case. This refers to the documents that support your case and also those that might undermine it, which you must share. For example, if you made an agreement with someone via email, which went wrong, you should disclose all of the emails between you about the agreement, even if they do not all support your case.

The court will also tell you when you need to send your witness statements to the other party. If you or the other party want to rely on expert evidence, the court will tell you how you should provide that evidence. It might be that just one expert gives a written report to the court or perhaps each party needs their own expert. This depends on the individual case.

# Section 2, Part 2: Starting and defending a claim

## Before starting a claim

Section 2, Part 1 explained the type of preparation you have to do to help decide if you want to bring a claim or not. Once you have gathered all the relevant information, if you still want to go ahead, then you need to know how to start the formal process of taking a case to court.

This might be a good time to seek a small amount of paid legal advice (which we talk about in Section 1) to check-in with a lawyer on whether they agree with your view of your case. This might save you money in the long run if they do not think your case is likely to win.

This Section deals with addressing legal problems in private law, which covers disputes between individuals or companies. For disputes with public bodies (like local authorities or Government departments), please refer to the section on public law in Section 4.

If you have a legal problem you may ultimately need to go to court to resolve it. But there is a lot to be done before a case comes to court. You will not have your first 'Hearing' in court, which is when there are legal proceedings or legal arguments in front of a judge, until all the relevant paperwork and processes have been completed, so these are very important.

Going to court is the last resort, and you are expected to have attempted to resolve your problem outside of court before starting legal proceedings. For example, if you can, talk to the person you want to bring the claim against. Try to see if you can come to an agreement which suits both of you, so that you are satisfied that you do not need to take your case all the way to court. Depending on the type of claim, there are likely to be a number of steps that the court will expect to have been taken before a claim or case is 'issued', formally starting legal proceedings, or have started at the court. These steps are known as 'Pre-Action Protocols' and the type of protocol to be used will depend on the type of problem that you have. The protocols can be found at www.justice.gov.uk/courts/procedure-rules/civil/protocol.

If there is no Pre-Action Protocol for your type of problem then you should follow the guidance set out in **Annex A** to the 'Pre-Action Conduct Practice Direction': www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct. You should look at that guidance and try to follow it whether you wish to start or issue a claim, or whether you have received a letter stating that a claim may be made against you.

## 'Letter before claim'

Broadly speaking, before starting a claim you should send a letter to the person or organisation (who will become the 'defendant') with whom you are in a dispute, giving clear but to the point details about your case. The legal name for this is a 'Letter before Claim'. The main points that should be included in this letter are:

- Why you say the defendant is liable or at fault
- A summary of the facts on which the claim or problem is based, and
- What you want from the defendant, for example, compensation.

The letter should also set out the documents which you want to use as evidence, and should request copies of any relevant documents you feel you need but do not have.

In the letter give the defendant a deadline (no more than 14 days) for getting a full response back to you. You should state that ignoring the letter may lead to you starting legal proceedings, which will increase the likelihood that the defendant will have to pay legal costs. We explain legal costs in more detail in Section 3, but in this instance, it refers to what you spend on bringing the claim, which might include seeking some advice from a professional (this could be a lawyer or an 'expert witness' which is explained in Section 3).

## Receiving a 'Letter before Claim'

If you receive such a letter, also known as a 'letter before action', you have two options:

- Respond fully within 14 days, or
- Provide a written acknowledgement of the letter within 14 days. In that acknowledgement, you should state when you will be able to respond or you can ask for further information about the claim before you provide a full response.

In your full response you should state whether you accept and admit to all or some of the claim, or none of it. If you do not accept the whole of the claim you should:

- Give reasons why you do not accept it, identifying which facts and which parts of the claim are not accepted, and giving your version of events if they are different, and
- State whether you wish to make a counterclaim, if you have suffered a loss caused by the claimant.

## Documents

In your Letter before Claim, you should list the documents which support your case and provide copies of documents requested by the defendant that are in your possession. You can also ask for copies of other relevant documents that you think the defendant might have if they have not already been provided. You will also need these documents if you cannot resolve the problem at this stage and need to make a formal claim.

## Next steps

Once these steps have been taken, both parties should have enough information to try to resolve the problem between them without immediately starting legal proceedings, which can turn out to be very expensive. However, if matters cannot be resolved out of court it may be necessary for a claim to be started (or 'issued') so that the court can provide resolution.

## Resolving your problem out of court

It cannot be said enough times that going to court should be a last resort. It can be a very stressful, expensive and complicated process. If you can, you should try to resolve your problem before you get to that stage. That will usually mean speaking with the other party, whether in writing or in person. It might mean settling for less than you had hoped for if you bring a claim, or accepting some fault and offering some type of compensation (which will often be money) if you are defending a claim. This can also mean that both sides can reach a resolution which they can live with, whereas going to court can mean that you get either everything or nothing that you were hoping for.

## Starting a claim – which court?

If you are left with no choice and have to start a claim, depending on the type of legal action you wish to take, you will need to identify the correct court in which to start your claim. Only certain courts are able to deal with certain issues, so you have to address your claim to the right one to make sure it is dealt with properly. You need to find the right form for the right court and send it to the correct place. Section 4 provides more information about particular types of case, but if we do not cover it there, you should refer back to some of the sources of advice in Section 1.

The table on the next page will help you to identify which court you should start your claim in. Sometimes there is more than one court you can go to. We do not explain in detail exactly which court should be chosen as that will depend on your individual case. Citizens Advice provides more detailed information on the different types of court (www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/courts_of_law.htm).

| Your claim | Court |
|---|---|
| Consumer disputes and debt problems (such as if you buy a faulty product or someone owes you money) | County Court or High Court (this will depend on how much money is involved in your claim. Cases must be worth £25,000 or more to be started in the High Court) |
| Landlord and tenant disputes | County Court or High Court |
| Personal injury claims (this is explained in more detail in Section 4) | County Court or High Court |
| Family cases | Magistrates' Court, County Court or High Court |
| Discrimination cases | County Court or High Court |
| Tax arrears | Magistrates' Court |
| Domestic violence cases | Magistrates' Court or County Court |
| Employment disputes | Employment Tribunal |

If someone owes you money but will not pay, you can also make a claim online, using the 'Money Claim Online' service (www.gov.uk/make-court-claim-for-money/overview).

Legal proceedings are started when you fill in the claim form and submit it to the court. You will have to pay a fee for this, which will depend on how much you are claiming. The court will then send, or 'serve', the claim to the defendant. If it is returned undelivered, it will be your responsibility to serve the claim. The type of claim form that must be used varies depending on the type of legal problem that you have.

When you have noted in which court you should appear, you need to be aware of the following:

- Proceedings may not be started in the High Court unless the amount of compensation you are asking for is more than £25,000
- Proceedings in personal injury claims must not be started in the High Court unless the value of the claim is £50,000 or more, and
- If the claim is complex, and is valued at £25,000 or more, it may be best dealt with in the High Court.

If it is not suitable for the High Court, it will start in the County Court.

## What type of claim do you have?

Two particularly common types of claim relate to family problems or employment problems. They have their own particular rules which you will need to know about.

### Family dispute

If your problem centres on a family dispute, for example if you are applying for a divorce or for contact with your child, you will need to use the correct claim or application form. A full list of the appropriate forms can be found at: www.familylaw.co.uk/articles/FPRForms-FullList. See Section 4 for more information on the next steps when making a family claim.

### Employment dispute

If you have an employment dispute, you may be able to bring a claim against your employer. Such claims usually need to be brought within a strict three month time limit from the date that the issue arose. To start an employment claim you need to use an Employment Tribunal 1 form (ET1). These can be found here: www.justice.gov.uk/downloads/forms/Tribunals/employment/ET1.pdf.

Please refer to the sections in this Guide on individual areas of law to find out what you need to do in that particular type of claim.

### Other legal disputes

Other legal disputes, known as 'civil law' disputes, are governed by the Civil Procedure Rules, as mentioned and linked to in Section 2, Part 1. However, generally speaking, for civil law disputes there are two methods of beginning proceedings:

- By issuing a claim form under CPR Part 7 (www.justice.gov.uk/courts/procedure-rules/civil/rules/part07). Use Form N1, and
- By issuing a claim form under CPR Part 8 (www.justice.gov.uk/courts/procedure-rules/civil/rules/part08). Use Form N208.

There are particular rules about how you have to bring your claim. It is worth consulting one of the advice agencies listed in Section 1 for some assistance.

In a case where dispute about the facts is not the main issue, because both parties agree on what happened, the court might still need to make a decision about what the law is in a particular case, to understand which party is 'legally right'. In this scenario your claim needs to be issued under Part 8. Part 8 also lists specific types of cases which have to be covered by that rule. If your case is one of these, then use Form N208.

Part 7 proceedings are for all other civil disputes. You can get both forms, as well as a range of others for various civil legal disputes here: www.justice.gov.uk/courts/procedure-rules/civil/forms.

When you come to fill out your claim form, you should:

- Identify the full name of each party and state whether they are the claimant or defendant
- Ensure it contains a concise outline of the nature of the claim
- Specify what you want to achieve, and
- Include your estimate of how much you think your claim is worth and any interest which might be due on that amount.

Anything written on the claim form must be true and the claim form must also include a signed Statement of Truth stating: "I believe that the facts stated in this claim form are true".

The claim form should contain the 'Particulars of Claim', which is the document setting out your case. If they are not included with the claim form, they should be served (sent) to the defendant within 14 days of the defendant having received the claim form.

Even if the Particulars of Claim are not included in the claim form, the points listed above should still be outlined to the defendant, so they are able to understand the allegations which are made against them.

## Defending a claim

If a claim has been issued and served on you, you can either accept the claim against you (admitting that the claim is true, which might mean that you accept you have to compensate the person bringing it) or defend all or part of it. If you wish to defend all or part of the claim you must file a 'defence'. A defence is a document that sets out why you say you are not liable or not at fault when the claimant has stated that you are.

If you fail to file a defence within 14 days of receiving the claim form, or within 28 days if you have filed an acknowledgement of service, the claimant can ask the judge to accept their claim automatically, because you have not denied it within the timeframe. That may have serious consequences for you, so you should respond as soon as you can if someone makes a claim against you.

If you wish to defend the claim you should include the following points in your defence:

- Which of the allegations set out in the claim form or Particulars of Claim you deny, and why
- Which of the allegations you can neither admit nor deny (perhaps because you cannot remember exactly what happened and the claimant has not provided enough information for you to be sure), and require the claimant to prove
- Which allegations you admit to
- A statement of your version of events
- If you believe that you are entitled to money which you say the claimant owes you, as part of your defence, you should say how much you believe you are entitled to, and
- A Statement of Truth ("I believe that the facts stated in this defence form are true").

Now that you know what is involved in preparing and issuing a claim or defence, the next step will be going to court, which we deal with in Section 3. Remember, it is never too late to resolve the issue out of court, even if the formal claim process has started.

*There are serious consequences if you file a statement which you do not believe is true.*

# Section 3: Representing yourself in court: On the day

## Going to court

If you have exhausted all the other options, you might find that you have no choice but to go to court to resolve your dispute. This Section will explain how you should go about it and some key tips to help you along the way.

## Before you leave for court

**If in doubt, pack it**
This is not a day when you can afford to pack light. Whilst you do not need to speak about every piece of evidence in court, you should bring the documents with you in case you are asked for them.

You need to take your 'bundle' of documents, which is what lawyers call the file of documents that they take to court with them. Your bundle should include witness statements, any 'written submissions' you have prepared and any relevant letters or emails from the court or from your opponent. The court will have asked you to send them a copy of the bundle in advance of your court date, which you must do, but it is a good idea to bring several spare copies of all your documents with you, so that you can give them to the judge or the other party (often called the other 'side') should they not have them for any reason. Witnesses will also need a copy of your bundle in case they want to refer to any of the documents during their evidence.

If you have been using any books to help you to understand the law, bring those with you. You might want to look things up during the day.

Check-list:

- Take your bundle of documents
- Bring a laptop and/or stationery to keep notes
- Bring some highlighter pens or post-it notes to keep track of key documents
- Dress for success

You will need to bring stationery or a laptop so that you can keep a careful note of everything that is said during the Hearing. These notes may be important if you decide to appeal against the decision. There is often legal argument during the Hearing about what witnesses have said and what that means for the case. You can use your notes to check that the court has properly recorded the evidence. You may also find it useful to bring post-it notes and highlighter pens to mark key documents.

In the end, this can add up to a lot of kit. Lots of lawyers come to court with a whole suitcase full of materials. You may need to do the same.

*Your 'bundle' should contain all the relevant documents the court needs to see. Make multiple copies of the bundle: one for the court; one for the other party; one for yourself; and a spare.*

## Dress for success

Dress as smartly as you can for court. If you have a suit (including a tie for men), then wear it. If you do not have a suit, there is no need to buy one specially.

**Last minute cramming**
Before you leave, re-read the most important documents, including your witness statement and any submissions you are planning to make to the court. It is particularly useful to practise saying aloud, either to yourself or to a friend or family member, the key things that you want to tell the court.

**Be early**
If at all possible, be at least one hour early for court. If you are late, the court might not wait for you. The Hearing may be cancelled, or the court could even go ahead without you. There is also a lot to be done before the Hearing begins.

**Bring a friend**
If possible, ask someone you know and trust to come to court with you. They may be able to help you keep calm and focused, assist you in keeping your papers together, and help with taking notes. They will normally be able to sit with you in court (although they will not normally be able to speak for you).

Your friend may (and usually will) be as unfamiliar with the law and courts as you are, but you will be able to work things out together, and it is good not to be on your own in what can be such a daunting process.

If you do not have anyone who you can bring with you, there might be a Personal Support Unit (PSU) at the court which can help. Visit the PSU website for more information: www.thepsu.org. You can also bring someone called a 'McKenzie Friend', a non-lawyer who can provide moral support, take notes, help with case papers or advise you on court procedure. More information about McKenzie Friends can be found at: www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/mckenzie-friendspracticeguidance-july-2010.pdf.

Let the usher know when you sign in (see below) that you have brought a friend and who he or she is. They may be asked to complete a short form, and to read a short guide on the things they can and cannot do to help.

Introduce your friend to the other party when you first speak to them, and when you first speak to the judge in the courtroom and introduce yourself, tell him/her you have brought a friend and who he or she is. You will normally be able to speak quietly to your friend in court if there is something relevant, but be very careful to ensure that you are not disturbing the Hearing if you do so; sometimes a written note is better.

## When you arrive at court

**Sign in**
Make sure you sign in at reception when you arrive at court. If you don't, you may not be called when your Hearing begins. Usually, there will be a list at or near reception listing when and where all the different Hearings will be held that day. Check with reception whether there is a list. If there is, note down the time of your Hearing, the room where it will be held and the name of your judge.

**Speak to the usher/clerk**
Every lawyer knows that the usher (or clerk) can be their best friend at court. If the court has an usher or clerk, make sure you find them as soon as you can. They will usually be coming in and out of the waiting area, often with a clipboard. If you cannot find them, ask at reception.

When speaking to the usher, be polite. You can find out all sorts of information from them. If you are not sure how to address the judge, you can ask the usher. You can check whether the other parties have arrived and, if not, why. You can sometimes find out how long the judge expects the Hearing to take.

If you want to use any documents that the judge does not have already, give them to the usher to give to the judge. This is likely to include a copy of your written submissions. If you hand these in an hour or so before the Hearing, the judge may have time to read them before you begin. If you are not sure if the judge has a document already, give in a copy just in case.


**Make sure that all of your witnesses have arrived**
If you have witnesses who support your case, make sure that they also arrive early. When you get to court, find them. If they are going to be late, speak to the usher/clerk about this as soon as you can.

**Speak to the other 'parties'**
Make sure you find all the other 'parties' you are expecting to come to court (usually just the other side in the case). They may be in a separate waiting room from you or they may have found a private corner somewhere in a corridor. If you cannot find them, the usher/clerk may be able to tell you where they are.

**Check that all the paperwork is in place**
Check with the other parties that they have all the documents that you are planning to rely on, then ask them if they have any additional documents for you. If they do, you may need to try to read those documents quickly before the Hearing begins. You should not be intimidated if you have to speak to the other parties. Just try to deal with them as politely as possible and do not get into an argument. You will have the opportunity to explain your case to the judge, you do not need to discuss it any further with your opponent before you go into court (unless you are both still trying to resolve the problem).

*'Make sure you speak loudly, slowly and clearly. Judges find it very frustrating when they cannot hear what you are saying.'*

Sometimes, another party will arrive at court with a document that you have not seen. If this document is important to the dispute (the topic of the Hearing) and/or very long, you may feel that it is important for you to have time read it before the Hearing begins. If so, explain what has happened to the usher and ask whether it would be possible for the Hearing to start a little later, to enable you to read the document. The usher will be more sympathetic to this request if you have arrived with plenty of time before the Hearing begins. Only do this if absolutely necessary.

When speaking with the other parties about the management of the case (for example, which documents you will be using for evidence, when you need to hand in documents, etc), these are 'open discussions', which means that they can be referred to in court. This means you should stick to the facts and stick to the point. Do not get dragged into a conversation about how strong you think your case is.

**Remember, there is still chance to 'settle'**
When having these discussions, remember that this is also a good opportunity to settle the case. A discussion about settlement cannot be referred to in court unless it results in an agreement between you and the other party. It is quite common for parties to come to an agreement immediately before a Hearing begins. If you would be interested in doing this, there is no harm in reminding the other parties that you would still be willing to settle if they would like to make you an offer. If you begin negotiations, make sure you tell the usher what is going on and, if necessary, ask if the Hearing can start late to give you enough time to negotiate.

If you reach an agreement, speak to the usher. You may still need to go into the court to tell the judge what has happened. The judge might want to make an Order that gives more force to your agreement, or might just explain to you how you can agree a 'binding contract' (an agreement which both sides have to stick to).

## How to speak at the Hearing

**Speaking in court**
When the time comes to speak in court, you will probably be very nervous. That is normal, and even barristers can feel nervous before making a big speech. But having put in all the work to get to this stage, you should feel confident that you have done plenty of preparation. Make sure you know what you are supposed to be calling the judge and whether you are supposed to stand up every time you speak (ask the usher beforehand if you are unsure). If you cannot find the usher, just call them 'Sir' or 'Madam'. Always be polite.

**Keep it simple**
Throughout the Hearing, use simple, non-legal language as much as you can. Speak in short sentences. You might be tempted to speak like lawyers speak on television. Resist this temptation. Lawyers do not really speak like that. Some bad lawyers do, but judges hate it. Judges just want you to say what you mean in plain English.

**Make yourself heard**
Make sure you speak loudly, slowly and clearly. Judges find it very frustrating when they cannot hear what you are saying.

Speaking slowly is the hardest part. When you are nervous, you will find yourself wanting to speak faster than normal. In fact, you need to speak at about half of your normal speed, leaving pauses in between each sentence. Remember that the judge will usually try to write down what you are saying. They will use these notes at the end of the Hearing, when they decide whether or not you should win your case, so you will want them to be good. A good way to make sure that the judge is keeping up is to keep an eye on their pen. When you finish your sentence, if the judge is still writing, wait. When the judge stops writing, start speaking again.

**Use signposts**
Where possible, try to give clear 'headings' to what you are talking about, in the same way that we have broken this section down into manageable chunks. In public speaking, these are often called 'signposts'. For example,

if you have four reasons for asking for something, say so. Then, as you explain each reason, say "my first reason is... my second reason is..." etc. This will help the judge to follow what you are saying. It will also mean that it is easier for them to take clear notes.

**Only interrupt when you have to**
When you come to court for the first time, it can be difficult to know when you are allowed to speak. As a general rule, try not to interrupt the judge or the other parties when they are speaking. However, sometimes the judge will move on to the next part of the Hearing before you have said something very important. If you think this is happening, it is acceptable for you to interrupt.

If you think that you need to interrupt, make sure you do it in the right way. If you are in a court where people stand to speak, just stand silently. The judge will then ask you to speak. If you are in a court where everyone remains seated, address the judge by their title when they come to the end of their sentence.

## At the beginning of the Hearing

**Check that the judge has all of the papers**
Make sure that the judge has all of the papers that you have handed in.

**Explain what you want and why**
At the beginning of the Hearing, the parties will usually be given a brief opportunity to speak. You are more likely to be given this opportunity if you are the 'claimant' (if you are the one responsible for bringing the case to court). Do not make a long speech. Explain in brief, simple terms what you are asking the court to give you and the key reasons why. For example, in a simple case, you might say something like:

"Madam, I am bringing a claim against Mr Smith for breach of contract. I paid Mr Smith £200 to fix my boiler and he did not fix it to a reasonable standard. I am asking the Court to order Mr Smith to give me my £200 back." Breach of contract is a legal way of saying that Mr Smith did not keep to the agreement you both made.

If your case is more complicated, you should still try to summarise the key points briefly and simply. For example, in a complicated case, you might say something like:

"My Lord, this is a judicial review of the decision of the local authority. On l May, the local authority decided to allow a road to be built through my garden. This decision should be overturned for two reasons. First, the local authority did not do a proper consultation before taking this decision. Second, the decision is unlawful according to section 1 of the Roads Through Gardens Act 1985. Therefore, I am asking the court to strike down the local authority's decision."

While you will probably have spotted that this is a made-up law, you should use this as an example of how to structure what you might say in your case.

Judicial Review is explained more fully in Section 4.

**Take a note of the timetable set out by the judge**
The judge will usually explain the Order in which everyone will speak at the beginning of the Hearing. Usually, the claimant will give their evidence first, because it is their case. The judge will sometimes set out a rough timetable for how long they want each witness or part of the Hearing to take. Listen carefully to this, and try to follow it.

## Giving submissions

'Giving submissions' is a technical term to describe making a speech to the court. This is the same as the speech you give at the beginning of the Hearing.

**Write down your submissions**
It is a good idea to write a summary of your key points to bring to the court and to hand to the judge and to the other party. Lawyers call these 'written submissions' or a 'skeleton argument'. Keep this short. It will not usually need to be longer than two or three pages, double spaced, with numbered paragraphs. For a short Hearing, a page may be enough. Lawyers will often write longer ones, but that does not mean that you should. Just write enough to get your points across.

### Opening submissions

As explained above, at the beginning of the Hearing, you will need to explain what you want and why. Often, these will be the only submissions that are required.

Sometimes, the judge may also need to make a decision about an issue that needs to be cleared up before the Hearing can continue. For example, there may be a dispute about whether the claim was brought before the deadline, or whether a particular bit of evidence is required. If this happens, explain your arguments simply and clearly. Once this issue has been decided, you have to accept the judge's decision. If it does not go your way, it can be tempting to bring it up again later in the Hearing. This will not help and will probably annoy the judge.

### Closing submissions

At the end of the Hearing, you might be given a chance to talk again about your main arguments and the evidence you presented. As usual, the rule is to keep it simple. Summarise each of your main points in an Order which makes sense. If there was a lot of evidence and a few witnesses, you might want to point out the main bits of evidence which supported each of your main arguments. In a short Hearing of less than a couple of hours, it will not be necessary to talk about the evidence again.

### Know your limits

Sometimes, the other side will make arguments about what the law is.

Before the Hearing, you might have tried to understand the law as well as you can. If you feel that you understand it and have a point to make, make it clearly and simply.

However, you are not expected to be a lawyer. The judge will try hard to think about the arguments that you would be making if you were a lawyer. The lawyers for the other side should talk to the judge about any law that is damaging to their case (and supports your arguments). In that way, the judge and the other lawyers will be aware that you are not a qualified lawyer and will make allowances for that.

If you do not understand an argument or a decision, ask the judge to explain it to you. You can ask at any point, and should try to do so sooner rather than later so you do not become more lost, but it is often best to wait until there is a natural pause, so you are not talking over anybody. If you have a question to ask, just say to the judge: "Excuse me Sir/Madam, may I ask a question?"

## Presenting your case

### The witness box

The next few paragraphs apply to civil claims where there is oral (spoken) evidence from witnesses. Some claims (such as Judicial Review and Statutory Appeals – see 'Public law and Judicial Review' in Section 4) are usually decided on written evidence only.

When it is your turn, you will be asked to give evidence (when you will stand or sit in the witness box and answer questions). When you go into the witness box, you will only be allowed to take your witness statement – if you have one – and the agreed 'bundle' of documents.

### Correcting your witness statement

If you have put together a witness statement, you will be asked to confirm that it is correct. If there are any points which you want to correct, tell the judge. If you want to add any points, you should ask the judge if you are allowed to do so. If it something new and important, you should tell the other parties beforehand. You will not usually need to read your statement out to the court, but you might be asked to do so.

### Calling your witnesses

If you have brought someone else to give evidence as a witness, they will normally give their evidence straight after you. If you have a witness, make sure the usher (before the Hearing) and the judge (in the Hearing) knows this.

Often the court will previously have asked for your witness's evidence to be written down in a witness statement. If that has happened, when your witness goes into the witness box you will only need to ask them whether their witness statement is true and complete. If it is not, give them the opportunity to say where it needs correction.

## Being cross-examined

This means being asked questions by the other side.

### Be familiar with your witness statement

If you are cross-examined at the Hearing, the court will usually focus on the evidence you have already given in your witness statement. You need to know your statement well.

### Tell the truth, the whole truth and nothing but the truth

This is the oath you will take at the beginning of giving evidence, and it is a good reminder of how you should answer questions. Listen carefully to the questions that you are asked. You do not need to do anything more than give a simple, truthful answer. That answer will often be "yes" or "no". If either of those would be an incomplete or misleading answer, say so. The judge will usually give you an opportunity to give a fuller answer.

If you do not remember something, say so. If you try to blag it, you will be caught out. There is nothing wrong with not having a perfect memory.

Do not make long speeches. Do not talk about other things which do not answer the question. Do not repeat yourself. Do not argue with the person questioning you. Just give simple, truthful answers.

## Cross-examining witnesses

### Put your case

The most important part of cross-examination (questioning the other side's witnesses) is giving the witness an opportunity to disagree with your version of events. You need to say to them all the relevant facts of what happened, so that they have a chance to respond. Lawyers call this 'putting your case'. For example, this might mean saying "Mr Smith, I put it to you that you deliberately built the wall with sub-standard materials and that is why it collapsed and I am not liable to pay for it." You would then need to allow Mr Smith to agree or disagree with that statement. **The witness always has the last word.**

### Keep a careful note

You will not be able to write down everything a witness says but, if you can, write down short notes on the answers they give. If you have a friend with you, it might be easier for them to take notes for you. If the witness says something important, try to write it down word for word. You may want to remind the judge of the words used later or use them to make an argument when making your closing submissions (at the end of Hearing, when you summarise your case).

### Do not use cross-examination to make speeches

The purpose of cross-examination is to put your case across. It is not an opportunity for you to make arguments. This means you should not be making any speeches or telling the court what you have concluded from what the witness has said. If they say something helpful to your case, simply write it down. You can make an argument about it in your closing submissions.

### Do not comment on the answers given

When the witness has given their answer, move on. It can be tempting to say "Aha!" or "That's right". Remember, you are only supposed to be putting your case.

### Ask closed questions

When cross-examining, it is best to ask closed questions. This usually means questions with a yes/no answer, which ensures that you have some control over what the witness says. For example:

**Don't ask:**
How did you get home?

**Do ask:**
You drove home, didn't you?

### Only ask one thing at a time

Try not to string your questions together into one long question. It is too difficult for the witness to answer lots of questions at once. Only ask about one fact at a time. For example:

**Don't ask:**
You drove home in a red car, with your daughter, didn't you?

**Do ask:**

| | |
|---|---|
| You drove home didn't you? | *Yes* |
| You were with your daughter? | *Yes* |
| And you were in a red car? | *Yes* |

### Ask questions in a sensible order

You should have written down a list of questions in advance to make sure that you are prepared to cross-examine. Make sure that the list is in a sensible order. The best and simplest approach is usually chronological (time) order.

### Ask about any inconsistencies

Sometimes the witness will have said things in different statements which contradict each other (suggesting that one of the statements is wrong), or there will be evidence or a document which contradicts their statement. When you are preparing your cross-examination, check all of the other side's documents for mistakes like that. If the contradiction seems important, make sure you ask the witness about it. When you do this, make sure you have written down the page and paragraph numbers of the contradictory statements. Ask them which statement is true. Then say to them why you think one statement must be untrue. For example:

| | |
|---|---|
| Please look at page nine, in the first paragraph. | *Yes* |
| You said the van was red, didn't you? | *Yes* |
| Then look at your statement, in paragraph two. | *Yes* |
| You said the van was blue, didn't you? | *Yes* |
| Which one of these was true? | *It was blue* |
| In fact, you never saw the van, did you? | *I did* |

### Don't argue with the witness

In the above example, it would tempting to say, "You can't have seen the van, because then you would know what colour it was, wouldn't you?" Do not do this. Save it for your closing submissions. You have made your point already. If you start making arguments to the witness, you will give the witness a chance to come up with a better answer. Stop while you are ahead.

### Your witnesses cross-examined by the other party

When the other party cross-examine your witness, they will be testing their evidence by asking them questions. Do not interrupt this process; the judge will make sure it is within the rules.

Once that cross-examination has finished, that is normally the end of the evidence from that witness. You can ask a question or two of the witness if they have left something unclear, but it is rare that this is necessary, and it can make things less clear rather than more.

## When judgment is given

**Make sure you understand it**
When all the evidence has been heard and the judge has had time to think about it all, they will give 'judgment', which is their decision about who wins the case. Some judges give long judgments and you may be unsure of the most important part. If you do not understand what the judge has decided, ask him or her.

**Keep a careful note**
Write down, as best you can, exactly what the judge says when they give their judgment. This means you should starting writing as soon as you know the judge has made the decision, even if they appear to be talking about the facts of the case. This is all part of the judgment.

**Ask how to enforce the judgment**
If you have won, you will need to know how to make sure that you actually get whatever the judge has ordered (for example money from the other party). Ask the judge how to 'enforce' the judgment.

**Ask about appealing**
If you lose and you might want to appeal (have the case heard again), ask the judge if it is possible to appeal and, if it is, what you will need to do next. In particular, make sure that the judge states any deadline for bringing your appeal. There are only certain circumstances in which you can appeal; it is not sufficient that you simply do not like the decision the judge has made.

## Costs

In some types of case, the party which wins can ask the court to make the person who has lost make a payment towards their legal costs and expenses.

There are two possibilities:

1. Whether such an Order should be made, and
2. In what amount should an order be made.

The judge may deal with both, or he/she may deal with the former but postpone (or, in legal terms, 'adjourn') the latter for another Hearing before a judge who specialises in legal costs.

If the winning party is successful, the amount awarded should be reasonable and proportionate to the cost of the case. 'Reasonable' in this context might mean having instructed a lawyer who has the right experience for that particular type of case, rather than one who was very senior and much more expensive. The amount may nonetheless be very high, and sometimes more than the amount involved in the case, if it was a dispute over money. This is why it is vital, as soon as you become involved in a legal case, or are thinking about bringing a case, to consider the potential consequences of paying the costs of your opponent, should you lose.

If you have won the case, ask the judge what costs and expenses you can claim. Prepare a note of any expenses in advance.

If you have lost the case, and the other side asks the judge to order that you make a payment towards their legal costs and expenses, you should do the following:

- Ask the judge to confirm that the case is one in which costs can be ordered
- If there were parts of the case that you won, even though you lost overall, ask the judge to take these into account
- Point out any areas where you think the costs might be higher than reasonable and proportionate, and
- Where you will need time to pay any costs, explain the situation to the judge.

We have now explained how a typical legal process will work, but there are lots of different areas of law which have their own rules. In Section 4, we explain in more detail the rules which apply to particularly common areas of law which your case might fall under.

# Section 4: Areas of law

This Section of the Guide gives you more detailed information about seven different areas of law which will be dramatically affected by the Government changes to who can get legal aid. It is likely that only one of the seven areas will be useful to you, so go straight to that area, and ignore the others.

Sections 2 and 3 of this Guide, which lay out how to prepare your case and represent yourself in court, give general advice to the procedures you should follow, and should always be kept in mind. However, if the part of this Section which is relevant to your case outlines a different way of going about parts of your legal problem, you should follow that instead.

# Personal injury law

## What is a personal injury?

A personal injury can be a physical or psychological injury, disease or illness. If you have suffered a personal injury that you believe to have been caused by another person or an organisation you may be able to recover compensation.

The most common forms of personal injury claims stem from the following types of accident or incident:

- Road traffic accidents
- Slipping and tripping accidents
- Accidents at work
- An injury or illness sustained by a victim in the course of a crime, and
- An injury caused by errors in receiving medical treatment.

## Before starting a claim

If you think you may have a personal injury claim you may ultimately need to go to court to resolve it. However, the courts expect that the parties in a personal injury case will have attempted to resolve the problem between themselves before starting legal proceedings.

A court will expect those involved (called 'parties') in a personal injury dispute to have followed the correct procedures (the 'pre-action protocol') for personal injury claims. That protocol can be found at: www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_pic.

If you have been involved in a road traffic accident and the value of your claim is not expected to be more than £10,000, you must use the following protocol: www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_rta. This protocol is known as the 'portal' and from the end of July 2013 it will apply to personal injury claims against employers and claims where public authorities may be liable for personal injury. For example, in 'slipping and tripping' accidents. The value of claims that the portal will deal with will rise to £25,000 from the end of July 2013.

If you have suffered injury or illness as a victim of crime you may be able to apply to the Criminal Injuries Compensation Authority. Details of the compensation scheme which it operates may be found at www.justice.gov.uk/victims-and-witnesses/cica.

## Letter before Claim

Broadly speaking, before starting a claim you should send two copies of a letter to the prospective defendant giving a summary of the facts on which the claim is based, together with an indication of the nature of any injuries suffered and of any financial loss incurred. You should try to give an estimate of the value of your claim, or to put it another way, the amount of compensation you think you are due (See the paragraph on 'Valuing the Claim' below).

The prospective defendant should then respond within 21 days identifying who their insurer is. They will then have up to three months to investigate the allegation that has been made.

The defendant (or their insurer) must reply after no more than three months, stating whether they admit that they are at fault for causing your injury or illness (that is whether they are liable for it) or whether they deny that they are at fault.

If the prospective defendant denies that they are at fault they need to enclose documents relevant to the allegation made along with their letter of reply. If the prospective defendant admits that they are at fault but states that the claimant contributed to the incident then the claimant should write back in response stating whether they accept they contributed or if not, and if not, why not, before issuing proceedings (starting legal action).

If matters cannot be resolved at this stage then it may be necessary for a claim to be started or 'issued' so that the court can provide resolution.

You must be careful before you proceed to start a claim – bringing legal proceedings can be very expensive even if you are representing yourself. You may, depending on the outcome of the case, be ordered to pay the legal costs of the other side in a dispute. Legal costs can become very substantial and can be more than the value of the claim itself in some cases.

## Experts

It is standard practice in personal injury claims for the claimant, and often the defendant, to obtain evidence from an expert to help the court in deciding the outcome of a claim.

Usually this expert will be a medical expert who will be able to set out what injury or illness the claimant has suffered and whether or not they are likely to recover fully from it. They may also be able to say how the injury or illness was caused.

There may also be a need to obtain evidence from an expert to help the court decide who was at fault for the incident. For example, in a road traffic accident it may be helpful to instruct an engineer who specialises in vehicle damage to look at the damage to both vehicles to see whether it supports one driver's version of events over another's. If you have suffered from an accident at work involving machinery, it may be helpful to have evidence from an expert to say whether the machine was faulty or whether there was some other reason for the accident.

If you think you might need to instruct an expert the following websites may help you identify the correct type: www.expertwitness.co.uk and www.thelawpages.com.

It is likely that you will have to pay any expert you instruct, so you need to think carefully about whether one is necessary, and how much they will charge. As mentioned above, in personal injury cases the court will expect to see some medical evidence setting out the nature of the injury or illness. If you cannot afford to instruct an expert to do that you should obtain as much information from your NHS GP as to the nature of your injury or illness and the steps that have been taken to help you recover from it.

You may also have to give the prospective defendant access to your relevant medical records so be prepared to ask for them from your GP's practice.

## Starting a claim – which court?

Personal injury claims are heard in either the County Court or the High Court. Proceedings must not be started in the High Court unless the value of the claim is £50,000 or more. Refer to Section 2 of this Guide for a table that outlines types of case and the relevant court.

## Procedure

Personal injury claims are governed by what are known as the Civil Procedure Rules ('CPR'). These rules can be found at the following website: www.justice.gov.uk/courts/procedure-rules/civil/rules. The rules set out the key aspects of bringing and defending a personal injury claim.

CPR Part 7 sets out the procedure for starting or issuing a claim. If you wish to bring a personal injury claim you need to use 'Form N1' which can be found at this website: www.justice.gov.uk/courtfinder/forms/n001-eng.pdf.

The claim form should:

- Identify the full name of each party to proceedings and state whether they are the claimant or defendant
- State the claimant's date of birth
- Contain a concise description of the nature of the claim
- State why the claimant believes the defendant is at fault
- Give **brief** details of the claimant's personal injuries, and
- Include the claimant's estimate of the value of the claim and any interest accruing on it.

The claim form must also include the report of a medical practitioner if the claimant is relying upon it and it must include a document known as a 'Schedule of Details of Past and Future Expenses and Losses', which outlines your predicted past and future loss of earnings and expenses such as the cost of replacing damaged clothing or taxis to and from hospital.

The claim form should contain the 'Particulars of Claim', which is the document setting out the claimant's case (the legal and factual reasons why the defendant is liable for the claimant's injury or illness). If it is not included with the claim form it should be sent to or 'served' on the defendant within 14 days of the defendant having received the claim form.

The Particulars of Claim, if not included in the claim form, should also contain the above information so that the defendant can understand the allegations which are made against him or her.

Finally, the claim form should contain what is known as a Statement of Truth signed by the claimant. The claimant **must** believe its contents to be true. The Statement of Truth should state as follows:

"I believe that the facts stated in this claim form are true."

## Valuing the claim – understanding the 'Schedule of Past and Future Expenses and Losses'

Whether you are in the pre-action protocol stage or whether you wish to issue a claim you will need to work out what you think you should be paid by way of compensation, and set out your various losses in a clear list.

In a personal injury claim the main type of losses include the following:

### Compensation for pain, suffering and loss of amenity

The court may award you damages for the pain, suffering and loss of amenity that has been caused by your injury or illness if you can prove that it has been caused by the defendant. It can be difficult to estimate exactly how much you will receive for this type of compensation but the judge will consider the guidelines given by the Judicial College to come up with a fair figure. These guidelines are known as the 'Judicial College Guidelines for the Assessment of General Damages in Personal Injury Cases'. The current guidelines are in the 11th Edition. You may be able to find a copy at your local library. Otherwise you may be able to purchase them online or in a legal bookshop.

**Loss of income**
The injury or illness that you have sustained may have caused you to take time off work or may have caused you to give up your job if you felt unable to continue in employment because of your injury. As a consequence you may have lost out on income that you otherwise would have received. You may be able to recover that 'lost' income if you can prove that it was due to the injury or illness that you suffered.

You need to work out how much lost income you have suffered at the time you send your pre-action letter or issue your claim, and have the figure to hand at the trial.

If you think that loss will be ongoing into the future you may need to work out how long you think that will be for, or whether you will have been disadvantaged in obtaining other employment because of your injury.

**Miscellaneous**
There may be other types of loss that you have sustained as a result of the incident that caused your injury or illness. If you think that you have suffered such a loss, you should include it in the schedule that you put together. Examples might be: damaged clothing, or if you have paid for a holiday but missed it because of the accident.

## Defending a claim

If a claim has been issued and served on you, you can either accept the claim against you or defend all or part of it. If you wish to defend all or part of the claim you must file a 'defence' at court.

A 'defence' is a document that sets out why you say you are not liable or not at fault when the claimant has stated that you are. In a personal injury case the defence should state why the incident that caused the injury or illness was not your fault. You can also challenge the amount of compensation that the claimant says they are owed.

If you fail to file a defence within 14 days of service of the claim form, or within 28 days if you have filed an Acknowledgement of Service (the form that is sent with the claim form), the claimant may obtain default (or automatic) judgment **against** you. This means you may be fully liable.

You must also include a Statement of Truth in your defence similar to that set out above for a claim form.

## Procedure in trial

Once the court has received the claim form and the defence it will send out 'directions' (instructions). The directions may include requiring the parties to fill in what are known as Allocation Questionnaires. Once those questionnaires have been received the court will allocate the claim to a particular 'track'. The tracks in personal injury claims are as follows:

- **Small Claims Track** – where the claim for personal injury compensation is less than £1,000
- **Fast Track** – where the claim for personal injury compensation does not exceed £25,000, and
- **Multi-Track** – for all other claims.

A judge may also require both parties to come to a court Hearing to investigate the issues in the case. This Hearing may be called a 'directions' Hearing or a 'case management' Hearing and is **not** the same as a trial. If you are in any doubt as to the type of Hearing you are to attend, carefully read the Order notifying you of the Hearing, which the court will have sent to you and, if necessary, contact the court to clarify exactly what they expect to do at that Hearing and what you need to do to prepare for it.

In any event it is very important that both parties comply with any dates that are given by the court. If they do not, the claim or the defence may not be allowed to proceed and the other party will have won.

The aim of the directions given by the court are to enable both parties to be ready for the trial, where the issues they do not agree upon will be dealt with.

If you are not sure about some of the terminology in the directions given by the court you may wish to check the

Civil Procedure Rules to see if they may help explain what is being requested. You can also write to the judge to ask them to explain what is meant by a certain direction or Order.

## Trial

Once you have been given the date for the trial of the case you will need to make sure that you have all you need in time for it. Make sure you comply with any directions given by the court to prepare for the trial. You will need to have all of your relevant evidence ready to be given at trial, including evidence from an expert (this may be a written statement or letter), and you will need to have an up to date Schedule of Past and Future Expenses and Losses. See Section 3 for further help on preparing for trial.

## Further help

Personal injury cases can be complex both in terms of deciding whether someone else has caused your injury or illness and in trying to work out how much compensation you are owed. Further assistance can be obtained from the Citizens Advice Bureau (www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_personal_injury_e.htm).

Remember, going to court should be a last resort and can be a very stressful, expensive and complicated process. If you lose you may have to fund the other party's legal costs (which can be very high) as well as any compensation that the court Orders you to pay. If you can, you should try to resolve your problem before you get to that stage.

# Employment Tribunals

If you have a legal problem to do with employment, read this section of the Guide. It will take you through some key steps involved in Employment Tribunals, which is where you will need to take most cases involving employment issues, if you go to court.

An Employment Tribunal is led by an employment judge, who is a lawyer specialising in employment law issues. The employment judge will sit alone in many cases, but in some cases (such as discrimination) will be joined by 'lay members'; people who do not have a legal background, but are experienced in dealing with workplace disputes, and have received specific Tribunal training. You should call the employment judge and the lay members 'Sir' or 'Madam'.

Remember that any and all documents you are bringing with you to court need to be available as copies for each member of the Tribunal; one copy for the witness stand, and one copy for the other party.

## Types of Tribunal Hearing

**Procedural Hearings**
This is a Hearing which simply acts to lay out how the case will be conducted. In some cases, for example, a procedural Hearing will consider:

- 'Directions' in order to prepare the case for a full Hearing (for example, the date for disclosure of documents and exchange of witness statements), and
- Individual issues such as whether a claim has been brought in time, whether the person bringing the claim (the 'claimant') is an employee, or whether the claimant is disabled within the meaning of the Equality Act.

These Hearings are usually held before an employment judge only. It is important to concentrate your preparation and any documents on the specific issues that the Tribunal has said that it will be considering: do not try to argue the full case. You may find it helpful to spend some time looking at the websites set out below, to help you to understand the key factors that the Tribunal will take into account, and to prepare accordingly.

**Full Hearings**
Employment Tribunals are relatively informal and all parties remain seated throughout, except witnesses when asked to stand to give the oath, who then sit down for the remainder of their evidence. Whilst more informal than some other courts, it is still important to be polite and respectful throughout.

## Types of employment claims

There are many different issues that a Tribunal can consider, and this Guide cannot hope to be comprehensive. At the end of this section there is a link to some websites that provide further information. You should consider carefully what types of claim you may be able to bring. All claims have a time limit within which they must be brought. Those time limits tend to be strictly kept to. Failure to comply with the time limit will prevent a Tribunal from considering your claim. It is essential that you check the time limit for bringing any claims, and act promptly.

## Most common types of claim

### Unfair dismissal

There are two basic types of unfair dismissal claim. The first is where your employer has dismissed you and you believe it is unfair. In this type of case, you will need to be able to explain what you believe made your dismissal unfair. Common complaints include the decision to dismiss was not fair or genuine, or that the process followed was unfair in some regard.

The second is known as 'constructive unfair dismissal', and this is where you have resigned because you believe that your employer has seriously breached your contract (a common complaint is that the employer's conduct has led to a breakdown in trust and confidence resulting in the employee not feeling that they can continue to work there). In this type of case, you need to be able to set out exactly what your employer did that breached your contract.

### Wages claims

A number of disputes can arise in relation to wages and pay: holiday pay, redundancy pay, bonuses and ordinary pay can all lead to disagreements. If you think you have not been paid correctly, then you will need to set out carefully the reasons why you believe you are owed money, and how much you believe is owed. Be sure to set out your calculations clearly and provide any documents to support them, such as diary records, pay slips or rotas. A Tribunal might be able to consider such claims under two headings:

- An unauthorised deduction from wages claim, or
- A breach of a contract claim (this type of claim can only be brought after termination of an employee's employment, and the amount of an award is capped).

### Discrimination

Discrimination claims are some of the most complex claims that can be brought in a Tribunal. Discrimination claims are based on conduct which is linked to a 'protected characteristic', not simply conduct that is negative or unfair. Protected characteristics include: race, religion or belief, age, gender, sexual orientation, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity. In bringing a discrimination claim, you need to be able to explain:

- The protected characteristic you rely on. For example, if you are bringing a race claim, state what your race is
- What your employer has done which you believe is unfair, and
- Why you think that conduct is linked to your protected characteristic.

It will greatly assist you if you can spend some time researching the different types of discrimination claim, and focus your evidence and arguments accordingly.

## Types of discrimination claim

**Direct discrimination** claims are where you believe that the conduct was because of your protected characteristic: someone without your characteristic would not have been treated in this way. For example: "I was not promoted because I am a Muslim, my colleague who is not Muslim was promoted".

**Indirect discrimination** claims are where you believe that a rule (known as a 'provision, criterion or practice') puts you and others with your protected characteristic at a disadvantage. For example, bonuses are based on full-time work, most women in your company work part-time and therefore do not qualify for bonuses.

**Harassment** is where someone subjects you to unwanted conduct related to your protected characteristic with the purpose or effect of violating your dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for you. For example, anyone who makes a mistake in the office is called 'gay', which offends homosexuals.

**Victimisation** is where you have done something to protect your discrimination rights, like raising a grievance (where you have a concern, problem or complaint at work that you take up with your employer), or bringing a claim, and you are treated less favourably because you have done so. For example, you raise a grievance saying that you think you have been bullied because you are 18, and following that grievance you are no longer invited to office social events.

Particular claims arise in respect of **disability discrimination**. If you are bringing a disability discrimination claim, and your employer does not accept that you are disabled, you should remember that it is not normally sufficient simply to say that you have a physical or mental impairment (like depression). You must prove that that impairment has a significant and long-term impact on your ability to carry out normal day-to-day activities. If you are found to be disabled, your employer has an obligation to make reasonable adjustments for your condition, and not treat you unfairly because of anything arising from your disability.

If you succeed in your claim, the Tribunal then need to consider what you might win in terms of compensation. You will be asked to state what you believe you are owed in a 'Schedule of Loss', which is what lawyers call the document where you set out how much compensation you want to get if you win your case. There are rules about what can be claimed and the limits on how much the Tribunal can award, which can be found on the Employment Tribunal website.

## Further information

Some useful sources of information on employment Tribunals and employment claims are:

- ACAS: www.acas.org.uk. In addition to providing mediation services, ACAS has a number of useful Guides and can assist you in understanding your employment rights
- The Employment Tribunal website: www.employmentTribunals.gov.uk. This contains forms and guidance
- The Government website, www.gov.uk, which has information about various different types of employment claims, and
- The Equality and Human Rights Commission: www.equalityhumanrights.com. This website has considerable guidance on bringing discrimination claims, and also contains links to the statutory Code of Practice that Tribunals may consider as part of a discrimination claim.

# Immigration Tribunals

This Section looks at appeals against decisions by the UK immigration authorities, many of which are heard by the Immigration and Asylum Chamber of the First-tier Tribunal, which we will call the 'Immigration Tribunal' in this Section. We will refer to the immigration authorities as the UK Border Agency or 'UKBA'.

This Section primarily deals with immigration cases which are **not** eligible for legal aid. If you are still eligible for legal aid, you should speak to an immigration solicitor, who should be able to assist you. Asylum cases are likely to be eligible for legal aid.

In immigration appeals, the UKBA is often referred to as the 'respondent', and someone who is bringing an appeal is called an 'appellant'. In a case where someone is applying to visit or stay with a family member in the UK, that family member is often referred to as the 'sponsor'.

## How it begins

You must be told in writing about any immigration decision by the UKBA. A 'Notice of Decision' (the document which tells you that your application has been refused) should tell you whether you have a right of appeal to the Immigration Tribunal, and what the time limit for appealing is. The reasons for the decision should also be included, either in the notice of decision or in a separate letter.

Some decisions cannot be appealed to the Immigration Tribunal, and if that is the case, the notice of decision should say so. In those cases it may be possible to bring a claim for judicial review in the High Court (see the Section on 'Public Law and Judicial Review' for more information).

This Section only deals with decisions that you can appeal against in an Immigration Tribunal.

If you are appealing against a decision made while you are in the UK, you have ten working days to send your appeal to the Tribunal after you receive the notice of decision, unless you are in immigration detention, in which case you must appeal within five working days. If you are outside the UK and are appealing against a refusal to grant you a visa to come here, you have 28 days to appeal. If you do not appeal in time, you should explain why in the appeal form and ask the Tribunal to allow you to appeal even though you are late.

You must return the appeal forms with a copy of the decision which you are appealing against. When completing the form it is not necessary to explain everything you would like to tell the Tribunal, just give an outline of what you are appealing against and why you think the decision was wrong.

You will have to pay a fee to bring your appeal, unless you fall into certain exceptions. Exceptions include appeals against deportation or removal from the UK, people getting legal aid, and people being paid some types of asylum support by the UKBA. Otherwise you can apply to have the fee remitted or reduced if you cannot pay. Detailed guidance on whether you have to pay a fee and how to pay it is available at: www.justice.gov.uk/downloads/Tribunals/immigration-and-asylum/lower/online-fees-guidance.pdf.

If the Tribunal allows your appeal, it may order the UKBA to refund all or part of your fee.

You will also be asked to say whether you want a Hearing of your appeal (whether you would like to come to the Tribunal and speak to a judge about your case) or whether you would like it to be dealt with on the papers, that is to say, without a Hearing. Although the fee is lower if you ask for an appeal on the papers, your appeal is usually more likely to succeed if you ask for a Hearing.

When the Tribunal receives the appeal forms from you, it will set a date for a Hearing. For appeals by people in the UK, this is usually within a few weeks. For people outside the UK, there is a longer process, allowing time for UKBA to send copies of all the papers to the Tribunal from the Consulate abroad – in those cases it often takes several months before the Tribunal sets a Hearing date.

It is extremely unusual for an appellant who is outside the UK to be allowed to come to the UK to attend their own appeal Hearing, and in most cases it will be their sponsor, if they have one, who comes to the Tribunal. What this Section says about coming to the Tribunal applies to sponsors of people outside the UK as well as to appellants themselves.

## Before the Hearing

When a date has been set, the Tribunal will send out a notice of Hearing telling you and the UKBA when and where you (or your sponsor) need to come to the Tribunal.

Before the Hearing, the UKBA has to make copies of all the papers which it looked at when making its decision. This includes any application form which you filled in, the notes of any interview which you went to and any letters or evidence which you sent in, as well as the decision and the reasons for it. In a deportation case for someone who has been convicted of an offence, this should also include details of the offence and the sentence passed. The papers should be put together and sent to the Immigration Tribunal and to you. This is called the 'respondent's bundle'. If you think there are any papers missing from this, for instance if you sent some evidence to the UKBA and it has not been included in the respondent's bundle, you should contact the Tribunal as soon as possible.

In many cases the Tribunal will hold a pre-Hearing review, in which a judge looks at the papers in the case and decides what you or the UKBA need to do before the final Hearing. You may be asked to fill in a questionnaire, in which you may be asked to confirm things like whether you have a representative, whether you are ready to go ahead with the appeal and what arrangements need to be made for the Hearing (for instance, whether you need an interpreter or whether you have a disability).

In some cases, the Immigration Tribunal may also arrange a Case Management and Review Hearing at which you and a representative of the UKBA will be asked to come to the Tribunal to discuss preparations for the Hearing. This usually only happens in more complicated cases or if the UKBA has failed to do something which the Tribunal told it to do.

The Tribunal may send out 'directions' (court Orders) telling you and the UKBA when to send in any documents and saying what else needs to be done before the final Hearing of the appeal. Usually the deadline for sending in documents is one week before the final Hearing. Copies of any documents you send in should also be sent to the UKBA. You must keep copies for yourself. The addresses where you have to send the documents will be on the Notice of Hearing or the directions.

In all cases you will need to use the time between the decision and the date of the final Hearing to prepare your case. This will include putting together documents which support your case and sending them to the Tribunal. Some suggestions are made below about what you may need to think about in different types of case.

If you have any witnesses, who may be able to give helpful information to the Tribunal, you should tell the Tribunal in advance and they should provide a letter or written statement saying what it is that they would like to say to the Tribunal.

## On the day of the Hearing

Most appeals in the Immigration Tribunal are heard by a single judge, who will be a lawyer. In deportation cases the judge usually hears the case with a lay member, i.e. a member of the Tribunal who is not a lawyer. Some important or complicated cases are heard by panels of two or three judges. You should be told in advance if your appeal will be heard by more than one person.

You should call the judge and any lay members 'sir' or 'madam'. The judge will usually introduce themselves and explain to you what is going to happen.

The UKBA is usually represented by a Home Office Presenting Officer or 'HOPO'. This person is a civil servant and is not usually a lawyer. They will not usually be the person who made the decision which you are appealing against and sometimes they may not know very much about your case.

Hearings are usually in public, which means that anyone can come into the room. If for any reason you want your case to be heard in private so that only the judge and the HOPO know about it, then you should ask the judge.

### Timings

At the moment almost all Immigration Tribunal Hearings are listed to start at 10:00am. You should make sure that you arrive at the Tribunal in good time before 10:00am, but this does not automatically mean that your Hearing will start at that time. The judge will often have several appeals to hear on the same day and will decide which order the appeals will be dealt with. It is usually a good idea to prepare to spend the whole day at the Tribunal, but if there is some reason why you need to leave early, you must tell the judge as soon as possible.

### Documents

If you have documents which you want to show the Tribunal and which are not in the respondent's bundle and which you have not sent in already, you should give them to the judge as soon as possible upon arrival. You should bring three copies of these documents; one for the judge, one for the UKBA representative and one for yourself.

To assist you with preparing your case you should read the paragraphs in Section 2 entitled: 'Preparation is key'; 'Convincing the judge'; and 'Evidence', as well as the whole of Section 3, with the exception of 'Cross-examining witnesses', 'When judgment is given' and 'Costs', which are not relevant to immigration cases.

There is guidance on the Tribunal website about how judges should deal with cases where the appellant does not have a representative: www.justice.gov.uk/downloads/Tribunals/immigration-and-asylum/lower/GuideNoteNo5.pdf. This is written for judges but may be useful to you in understanding what the judge can and cannot do to make the Hearing easier for you.

**Interpreters for non-English speakers**
There will be an interpreter if you need one, as long as you have asked for one in advance. The judge should give you and the interpreter a chance to talk to each other before you begin to make sure that you both speak the same language and that you understand each other. If you are not completely happy with the interpreter, it is very important to say so. If you do not understand something which the judge or the HOPO says to you, or if you say something which is not properly interpreted into English, then the appeal can go badly wrong. Judges will usually be sympathetic to requests to change the interpreter if they believe that there may be a genuine problem.

**Evidence**
The Hearing will begin with evidence from you. This is called 'evidence-in-chief'. You will not be asked to give your evidence on oath. You will simply be asked to confirm that what you are saying is true. If possible, you should have written down what you want to say to the judge in a letter or statement and have sent it in before the Hearing. In that case you can usually just tell the judge that what you have said in writing is true, unless there is something new or something important which you have forgotten to say in writing that you would like to add. The judge may ask you questions to make sure that they understand you properly and that you only talk about what is really important in the case.

**Cross-examination**
Once you have given your evidence, the HOPO will have the chance to ask you questions. This is called cross-examination. The type of questions will depend on what reasons the UKBA have for not accepting your appeal. For instance, if the UKBA think you are not telling the truth about something, they will say so and give you the chance to explain. If it is just a matter of whether you have enough money to support yourself, for example, they will ask you questions about that.

Section 2 of this Guide talks about how to give your evidence, but you should remember that when there is an interpreter, you need to speak especially slowly and carefully, so that the interpreter understands you and has time to interpret what you say into English.

If you have any witnesses, they should be waiting outside while you give your evidence. You should make sure that the judge knows they are there. They will then be called into the Hearing room one by one, and the same process of questioning applies.

**Submissions**
After the evidence has been heard from you and any witnesses, each side will make submissions. Normally the HOPO will be asked to go first, and they will explain to the judge why the UKBA thinks your appeal should fail. You should not interrupt during the HOPO's submissions, even if you disagree strongly with what they are saying.

After the HOPO's submissions, you have the chance to make submissions explaining why you think that your appeal should succeed, and replying to anything the HOPO has said. Try to stay polite and calm, even if you do not like the things which have been said about you or your case by the HOPO. If the judge says anything or asks you any questions during your submissions, you should listen very carefully as he or she may be giving you an idea of what they think and what your submissions should focus on.

At the end of submissions, the Hearing is over. Sometimes the judge will tell you immediately what the result of the appeal is, but in most cases they will reserve their decision, meaning that they are going to think some more about it before making their decision. Do not worry if that happens in your case.

In every case, the judge has to write down the reasons for the decision in a judgment or 'determination'. This will be sent to you by post, usually about two to three weeks after the Hearing.

*When putting together your own evidence, remember that the judge will have no prior knowledge of your case. Present your evidence in a logical and direct way.*

## After the decision

If your appeal is allowed, that will generally mean that the UKBA has to do what you asked it to do, such as grant a visa, or allow you to stay in the UK. However, the UKBA can appeal in certain circumstances. In some cases the effect of the Tribunal's determination may simply be that the UKBA has to make another decision because the previous one was not lawful.

Both sides have the right to appeal against the Tribunal's decision to the 'Immigration and Asylum Chamber of the Upper Tribunal'. This can only be done on a point of law, which means you believe the judge got the law wrong when he or she decided your case. You cannot appeal (and nor can the UKBA) simply because you do not agree with the decision which has been reached. Appeal forms will be sent out with the determination and the time limits are strict. Again, see the section on Public law and Judicial Review for more information about challenges.

## Types of Immigration Hearing

There are many different kinds of immigration appeal, and this Guide cannot hope to cover absolutely everything.

This section focuses on some types of case where you are less likely to have a lawyer. Legal aid will still be available for asylum cases, and as asylum is a particularly complicated area of the law, you should try to find yourself a solicitor. There is a Best Practice Guide for asylum appeals, aimed at lawyers, at www.ein.org.uk/bpg/contents.

### Deportation cases

'Deportation' has a special meaning in immigration law and usually refers to someone whose presence in the UK is considered to be against the public interest. The most common example is someone being forced to leave the UK because they have committed a criminal offence. Apart from asylum cases, the main basis on which deportation can be resisted is if it would interfere disproportionately with your family life, under Article 8 of the European Convention on Human Rights. In particular, that arises if you have a spouse, partner or children who are British or have the right to live in the UK. You will need to ask any adult family members to come to the Tribunal to speak about their relationship with you. It is particularly important to show that, if you are deported, any children you have will be negatively affected, as the Tribunal has to take the interests of children very seriously.

It may also help if you can show that you have lived in the UK for a long time, or if you have health difficulties, although these factors by themselves may not be enough to stop you being deported, especially if the offence is a serious one. In such cases it is also particularly important that you try to show that you have behaved well in prison or after being released, so that the judge can have confidence that you will not commit any more offences.

### Applications to stay with partners or other family members

In these cases it is important that you try to understand the Immigration Rules (see below) concerning family applications, and that you make sure you understand

exactly why your application has been refused. It is also important that your partner or other family member(s) should come to the Tribunal with you to give evidence and that you provide the Tribunal with as much financial information as you can.

### EU applications

Special rules apply to citizens of the European Union (or European Economic Area), including in deportation cases, meaning that it is often harder for them to be deported even if they have committed offences. Special rules also apply to the partners and other close family members of EU citizens, as long as the EU citizens are working in the UK or exercising their rights under EU law in other ways. Unlike for non-EU applications, there are no strict financial rules for applications by people to be allowed to stay with family members who are EU citizens, so you are not required to provide the same level of financial information. This means that you do not need to be earning a particular amount of money, or to have a particular level of savings, or to show bank accounts for a particular period of time, whereas if you are applying as the partner or family member of someone from a non-EU country, you generally do have to give detailed information about their earnings and/or savings. The rules are very rigid and the application is likely to be turned down if the rules are not met.

### Student applications

Refusals by the UKBA to allow people to stay as students often concern whether the college or university has provided the right documents. You should make sure you understand what documents are needed and you should speak with your educational institution about this. You may also need to provide detailed financial information, if there is a dispute about your financial situation. In other cases you may need to prove that you are genuinely coming to study and not to work. In these kinds of case, the Tribunal can only consider evidence about the situation at the date of the UKBA decision; it cannot normally take account of any changes, for example in your financial position, after the date of the decision. The UK Council for International Student Affairs (UKCISA) has guidance on immigration for students and their families at: www.ukcisa.org.uk/student/immigration.php.

### Bail

If you are in Immigration Detention (being held by the authorities), you may be able to make a bail application for yourself. This means asking a judge to order your release. Bail Hearings are usually arranged at only a few days' notice and the procedures are even less formal than in other cases. There is a comprehensive Guide on bail, aimed at helping detainees to run their own bail Hearings, published by the charity Bail for Immigration Detainees (BID), at: www.biduk.org/10/how-to-get-out-of-detention/how-to-get-out-of-detention.html.

## Further information

In addition to the websites mentioned above, other useful sources of information on immigration law include:

- The Immigration Rules and UKBA policies, found on the UKBA website: www.ukba.homeoffice.gov.uk/policyandlaw/
- The Tribunal's website: www.justice.gov.uk/Tribunals/immigration-asylum
- The website of the Immigration Law Practitioners Association (ILPA): www.ilpa.org.uk, which includes information sheets and updates on recent developments, aimed at non-lawyers
- The Electronic Immigration Network: www.ein.org.uk. This has a lot of information about various aspects of immigration and asylum law (some pages are members-only)
- The Legal Action Group, which has published a handbook, *Foreign National Prisoners: Law and Practice*, that includes useful sections on immigration law, especially asylum, human rights and deportation, and
- The Joint Council for the Welfare of Immigrants (JCWI), which is expected to be issuing a new edition of its very accessible *Immigration, Nationality and Refugee Law Handbook* (in 2013).

# Family law

Family law is the area of civil and public law which deals with a broad range of family-related legal issues and domestic relations, such as divorce, adoption, property settlements and taking children into care. However, this section is limited in scope to deal only with the legal problems associated with the termination of relationships (that is, divorce or separation) which can frequently result in court Hearings that help to settle disputes over the separating couple's finances, and the living arrangements for their children. Property settlements are covered in the next section of this Guide.

## What is your case?

If you are involved in care proceedings (also known as public law cases, which are brought about when a local authority believes that a child's welfare is endangered) public funding is still available, so you should see a solicitor who specialises in care work as a first step.

Legal aid is generally not available in private law matters involving children (disputes between parents or other individuals about the upbringing of children), and in financial disputes between married couples or those in civil partnerships. In these cases you are expected and encouraged by the court to have considered negotiation or mediation before issuing (beginning) proceedings. This is the process of the parties involved trying to agree an outcome outside of court. However, if that is not possible, as a final resort, you can ask the court for help. The courts will come to a decision on your case and make an Order, which you will have to follow, and will be made with the best interest of the child in mind. When making any decision about the upbringing of a child, the court's paramount consideration is always the child's welfare.

If you have a child or children with someone you are not married to, the courts can also help. For example, it is possible to claim for Financial Provision under section 15 and schedule 1 of the Children Act 1989 for financial support provided by the other parent of the child in question.

If you are a victim of domestic abuse (including violence, threats of violence or other physical or verbal abuse) you may be able to get public funding for your case. Also, some solicitors offer short, free advice sessions and they will be able to advise you on what you can and should do.

If you are co-habiting with your partner (living together, but are not married or in a civil partnership) in a jointly owned property, or a property owned by your partner that you believe you have a right to a share of, you may have a claim under Trust Law. See the next section in this Guide for further information.

## Private law children applications

Most of the relevant law is contained in sections 1-14 of the Children Act 1989 (CA 1989), so it is advisable that you read as much of it as you can before you begin to prepare for your case.

First, find out if you have 'parental responsibility' for the child or children in question. Parental responsibility means all the rights and duties you have as a parent. See the Children Act sections 2-4 for more information. If you are the mother you have parental responsibility automatically. If you are the father you are deemed to have parental responsibility if you were married to the mother when the child was born, if the birth was after 1 December 2003 and you are registered on the birth certificate, or if you have entered into a 'parental responsibility agreement' with the mother of the child. If you do not have parental responsibility you are able to apply to the court for an Order granting it to you.

**Orders under the Children Act 1989, section 8**
In a private law child application, the court's decision will be in the form of an Order (these are mandatory instructions from the court that you must abide by). The most common Orders are those under Children Act 1989, section 8. When making a section 8 Order the court will take the child's wishes and feelings into consideration, and the older the child is, the more weight their wishes usually

carry. Tempting as it may be, the courts do not appreciate parents (or others) discussing court cases with children or trying to influence their views. You must not do this. The most common Orders are outlined below.

**Residence Orders**
These specify who a child is to live with. It can be more than one person, which is referred to by lawyers as 'shared residence', and is an outcome the courts increasingly favour, as they see it in the best interest of the child to spend time with both parents, where at all possible.

**Contact Orders**
This is an Order which requires the person the child lives with, to make the child available for contact with the other person named in the Order (often the non-resident parent). Parents and relatives do not have a right to contact with the child if they are not named on the Order. However, unless there is a good reason why it is not in the child's best interests, the starting point from the court's perspective will be that a child benefits most from having a relationship with both parents. If a Contact Order is made and the child is not made available for contact, the court can enforce the Order and penalties may apply for non compliance.

**Prohibited Steps Order**
This prohibits the person named in the Order from doing certain actions without permission from the court, for example, removing the child from the other parent or from the jurisdiction (the geographical area covered by the court's legal reach; in this case, England and Wales).

**Specific Issue Order**
This Order gives 'directions' (mandatory instructions) about a particular element of the child's upbringing, for example, which school they must attend.

## Procedure – what happens at the Hearing?

You should follow the Family Procedure Rules 2010 (www.justice.gov.uk/courts/procedure-rules/family), as they outline the steps you will need to take during a Hearing. If you are lost at any point, do not be afraid to ask the judge about any 'directions' made in court, as it is very important that you understand fully what is expected of you and what is going on if you are unsure.

At the first hearing (known as the First Hearing Dispute Resolution Appointment: FHDRA) you may be seen by a Children and Family Court Advisory and Support Service Officer, often called 'CAFCASS' officers, who will try to assist you and the other party in coming to an agreement about some or all of the issues. The CAFCASS officer will tell the court the outcome of the meeting and make recommendations for next steps towards the most positive outcome. For example, you might be ordered to attend a short course for separated parents (SPIP). There is a useful 'Practice Direction' about the first hearing at: www.justice.gov.uk/courts/procedure-rules/family/practice_directions/pd_part_12b#IDAKUXXC.

If the court feels more information (including about the child's wishes and feelings) is needed at this stage, it may ask that a report is carried out by a CAFCASS officer (or a social worker). This is called a 'section 7 report'. The person writing the report will come and talk to you, the other party and the child, and the report will make further recommendations to the court about the Orders it might consider making. If the parties cannot agree what should happen, the court will make the decision at a final hearing at which the parties, and sometimes the CAFCASS officer, give evidence. The court does not have to follow the report but has to have a good reason not to.

## Financial Remedies (formerly called 'Ancillary Relief')

Financial Remedies is what lawyers call the process where the court looks to determine how fairly to distribute assets between former spouses or civil partners following a divorce or dissolution of the civil partnership. Here the court can also decide whether or not there should be ongoing maintenance payments. Financial Remedies

applications only apply to married couples or those in a civil partnership who are in the process of getting, or have got, a divorce. However, if you are unmarried but have children together you still may be able to make a claim against the other parent for Financial Provision under Schedule 1 of the Children Act 1989.

### Dividing assets fairly

The court has to work out what the parties' financial resources are and then divide them fairly by way of an Order. The Orders the court can make are set out in the Matrimonial Causes Act 1973 (MCA 1973) sections 23-25, so it is a good idea to read this. The court can make these Orders any time after they have made the first Order in divorce proceedings (called a 'grant of Decree Nisi' by lawyers), but they cannot take effect until after a divorce that has been granted (called 'Decree Absolute').

There is one exception to be aware of: an 'Order for Maintenance pending suit' (maintenance refers to the periodical payments to be made by one party to the other). An Order for Maintenance pending suit can be made by the court any time after the process to get a divorce has begun, and the payments can be ordered to continue for any period of time until a decision, called a Final Order, has been made about the case (i.e. whether a divorce has gone through or not).

Some Orders cannot be made once a party re-marries unless an application has been brought beforehand. This means it is important to have applied for Financial Provision before a divorce is finalised.

The most common Financial Provision Orders are:

- The sale of property and division of proceeds (dividing the money made from the sale).
- Transfer of the family home to one party, in some cases with the other party retaining an interest in the property which can be realised at some time in the future, frequently when the youngest child reaches 18 or leaves full-time education.
- Payment of a lump sum by one party to the other.
- Maintenance payments by one party to the other for a specified period or for as long as both parties are alive.
- A pension sharing Order (where the court orders a pension to be shared).

The court looks at how the separating couple can mostly fairly share any assets by looking at the 'Sharing Principle' (which looks at the right to share assets that have built up during the marriage), the individual needs of both and any children, and potential compensation that either or both party could claim. 'Sharing' and 'needs' are considered to be the most important, although quantifying 'needs' can be very hard. Note, that the court cannot order one party to pay the other's debts other than by payment of a lump sum or through maintenance.

To understand more about how the court decides how to fairly divide any assets, you should refer to MCA 1973 section 25. Whilst the court tries to divide the assets fairly, remember that this does not necessarily mean in equal shares. It is also important to remember that the court will consider 'bad behaviour' only in exceptional circumstances, for example gambling away significant levels of matrimonial assets. Also, if a party gives away or moves assets in order to avoid an Order, the court can reverse or prevent the transaction to prevent this (see MCA section 37).

If the parties have a child, then the child's welfare is the court's first consideration and ensuring the child is securely housed is a priority. This can have implications for who the court grants property to.

### Child support

Child support is not usually dealt with by the court. If the child or children live with you and your former spouse (wife or husband) is not paying child maintenance (financial support), you should consider applying through the Child Support Agency.

*It is very important to comply with court deadlines, but if you are struggling, make a formal application.*


## Procedure – what happens at the Hearing?

Procedure is mainly outlined by the Family Procedure Rules 2010. Again, do not be afraid to ask the judge about any 'directions' made in court as the judge understands that you will not have done this before.

Before the first Hearing, known as the First Appointment, you have to complete, file at Court and serve (send, to the other party) a form called: 'Form E', which you can find here: www.justice.gov.uk/forms/hmcts. On Form E you will have to set out your financial position: your assets (including all property you own), income (from all sources), liabilities and income needs. Make sure you include a copy of Form E in your 'bundle' (the papers you will take to court).

The First Appointment is your chance to ask for any further information from the other party that you think is relevant. For example, if you think there are assets or income that have not been disclosed, now is your time to mention it. Put your questions and requests into a "Request for Further Information and Documents" and file and serve it together with a short chronology (timeline) of events and a list of the issues you consider to be relevant in your case. You must do this at least 14 days before the Hearing. The judge will decide what information each party needs to provide, and will tell you when you should submit it by, and how. The judge may also decide if expert evidence is required, for example valuation evidence in relation to properties or businesses (understanding the value of a property).

At the First Appointment the court will list the case (arrange a date) for a Financial Dispute Resolution Hearing (FDR), which is a court appointment used for settlement of financial matters in divorce cases. At least seven days (although this can change, so do check) before this Hearing you will need to have written to the other party saying what you would accept by settlement and then have filed a copy of this document at court. At the hearing the judge will expect each party to briefly set out their case, and then the judge will advise on an appropriate settlement. The judge cannot force you to settle, but he or she will encourage and assist you to do so. If you do reach an agreement the judge will approve it. It will then be made into an Order by the Court. If your case does not settle at FDR it will be listed for a Final Hearing for the judge to hear further evidence and then make a Final Order.

## Further information

For further information, family barrister, Lucy Reed, has published a book: *Family Courts without a Lawyer*, which is specifically designed to help people involved in disputes with a former partner over money or children and do not have a lawyer to represent themselves in court.

# Property ownership in relationship breakdowns

Where there is an argument about the ownership and/or occupation of a property when a relationship breaks down between an unmarried couple, the parties can ask the court to help them reach a solution. The power of the court to do so is contained in the Trusts of Land and Trustees Act 1996, sometimes referred to by lawyers as 'TOLATA'. The law in this area is complex and if possible legal advice should be sought.

It is important however, to consider whether a negotiated agreement can be reached before taking the matter to court. Assistance is available through mediation, when a qualified third party will assist you in trying to reach a settlement. For more information on mediation, visit: www.familymediationcouncil.org.uk or www.civilmediation.justice.gov.uk.

In English property law there are two elements relating to the ownership of property. First, there is the legal interest (the property owner registered at the Land Registry), and second, the beneficial interest (when somebody is entitled to a portion of ownership, but is not the registered legal owner). The legal owner may be holding some of the beneficial interest on behalf of (or for the benefit of) another person.

In a case of joint legal ownership, where the precise details of the two elements are fully recorded in writing, this will determine the ownership. For properties purchased after 1998, refer to the Land Registry's Form TR1 (www.landregistry.gov.uk/public/forms/completing-form-tr1). If the position is not clear from the written documentation, there will be arguments as to how much each party owns. Where the property is held in one party's name only, the non-owner will have to persuade the court that it was intended that they have some beneficial interest in the property. Where there are children who need to be housed, the 'Schedule 1 of the Children Act 1989' (www.legislation.gov.uk/ukpga/1989/41/contents) may provide a remedy to help secure a home during their dependency.

If your case is taken to court, there are a number of key documents that will assist your case, and it is advisable to secure them at an early stage. They include:

- Any documents relating to the purchase of the property
- The title deeds and Land Registry documents (post 1998, the TR1 Form)
- Any documentation relating to a mortgage on the property, and
- A short chronology of events and discussions relating to the purchase and running of the property.

This section is very concise, and more information can be found here: www.advicenow.org.uk/living-together/ and here: www.landregistry.gov.uk.

# Public law and Judicial Review

## Challenges to Government decisions, actions and failures to act

This Section will give you more information about how you would go about challenging a decision, action or failures to act by a Government Department, or some other public body, like a local authority. This is known as 'public law'. In this area, it is a very good idea to seek some legal advice at an early stage (see Section 1). These cases are complicated and you can be at risk of paying the other party's costs if you lose. You may want to consult a specialist public law solicitors' firm or, using public access (for information visit: www.barcouncil.org.uk/publicaccess), a specialist barrister. They may even be able to represent you on a 'no win, no fee' basis or with legal aid funding. If not, they may at least be able to give you some advice to set you off on the right track.

There are very short time limits which you will have to stick to if you want to bring a claim. This is particularly the case in judicial review, which is explained later in this section. Please make sure you are fully aware of these and start your case as early as possible so that you do not miss any deadlines.

## Which Court or Tribunal?

You have to bring your challenge in the right Court or Tribunal. More and more challenges to decisions of public bodies are now heard by the 'First-tier Tribunal'. This is the name given to a large family of Tribunals that hear lots of different kinds of cases. Each type of case has its own specialist Tribunal with judges who are expert in that area. If your case can be heard by the First-tier Tribunal you are obliged to bring it there. If not, you may be able to bring your case to the High Court.

Therefore, your first task is to work out whether you can bring a claim before the First-tier Tribunal.

The First-tier Tribunal is split into six different parts, known as Chambers. Within those six Chambers are a number of Tribunals which specialise in particular types of case. The most important ones are:

| Chamber | Type of Tribunal | Type of case |
|---|---|---|
| General Regulatory Chamber | Charity | Appeals against and applications for review of decisions of the Charity Commission in relation to the registration and functioning of charities. |
| | Consumer Credit | Appeals against decisions of the Office of Fair Trading in relation to consumer credit matters. |
| | Environment | Appeals against sanctions and regulatory action taken by the Environment Agency and Natural England. |
| | Estate Agents | Appeals against decisions of the Office of Fair Trading in relation to estate agents and their duties. |
| | Food | Appeals against certain types of decisions made by the Food Standards Agency and other food industry regulators. |
| | Gambling | Appeals against regulatory decisions of the Gambling Commission in relation to gambling licences. |

| Chamber | Type of Tribunal | Type of case |
|---|---|---|
| | Immigration Services | Appeals against decisions of the Immigration Services Commissioner about the regulation of the provision of immigration services. |
| | Information Rights | Appeals against decision notices of the Information Commissioner under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. |
| | Transport | Appeals about approved driving instructors, trainee driving instructors and providers of driving training. |
| Health Education and Social Care Chamber | Care Standards | Appeals against decisions relating to the registration of individuals wishing to work with children or vulnerable adults, or provide health and social care. |
| | Mental Health | Appeals, applications and references in all types of decisions and actions which relate to the mental health of an individual under the Mental Health Act 1983. |
| | Special Educational Needs & Disability | Appeals against decisions of local education authorities in relation to assessments and statements of special education needs, as well as disability discrimination claims against schools. |
| | Primary Health Lists | Appeals against decisions of Primary Care Trusts about lists of medical, dental and ophthalmic practitioners. |
| Immigration and Asylum Chamber | Immigration and Asylum | Appeals against decisions relating to your immigration status or an application for asylum. See Section 4. |
| Social Entitlement Chamber | Asylum Support | Appeals against decisions of the UK Border Agency about the social support arrangements for asylum seekers. |
| | Criminal Injuries Compensation | Appeals against decisions of the Criminal Injuries Compensation Authority. |
| | Social Security and Child Support | Appeals against decisions of the Secretary of State for Work and Pensions, HMRC and local authorities about entitlement to all types of welfare benefits and tax credits. |
| Tax Chamber | Tax | Appeals from all types of decision made by HM Revenue and Customs about any type of tax or national insurance payments. |
| War Pensions and Armed Forces Compensation Chamber | War Pensions and Armed Forces Compensation | Appeals about war pensions, compensation given to former members of the armed forces and the assessment of disability for that compensation. |

If your problem seems to fall into one of the areas covered by one of these Tribunals, it does not necessarily mean you can bring a claim there. For example, you may only be allowed to challenge specific types of decision or action in a Tribunal, or you may only be allowed to challenge the decision or action for particular reasons, which do not apply to your problem. You need to look at the relevant Tribunal rules to find out exactly which kinds of case you can bring in each Tribunal. The rules can be found at www.justice.gov.uk/Tribunals/rules. There is also a lot of helpful information on the Tribunals website: www.justice.gov.uk/Tribunals.

## What to do if you can bring a case in a Tribunal

If you cannot bring a case in a Tribunal, skip this section, and go to the next section, entitled: What to do if you cannot bring a case in a Tribunal: Judicial Review, which discusses how to challenge a Government decision in the High Court.

### Work out how to bring your claim

Tribunals are intended to be more informal and less complicated than courts. The idea is that anyone should be able to represent themselves in a Tribunal, without the need for a lawyer to help them. However, each of the different Chambers of the First-tier Tribunal has procedural rules which you should follow and some of them can be complicated. It is always sensible to check the rules carefully to make sure you understand what the Tribunal will expect of you.


The rules can be found at www.justice.gov.uk/Tribunals/rules. Make sure you have found the correct form for bringing a claim. Then follow the rules carefully for how to bring your claim.

### Time limits

When you look at the rules, pay close attention to any time limits. The length of time you have to make your challenge will depend upon the type of case it is. Make sure you check the relevant rules or the Tribunal's website to see how many days you have. If you are late, you will have to apply to the Tribunal to ask for permission to bring your case. Your application may be refused and then you will have missed your opportunity.

### The Hearing

Usually, any Hearing you have in a Tribunal will be heard by a Tribunal judge. A Tribunal judge is a lawyer. In some types of Tribunal, the judge will also sit with non-legal professionals who have specialist knowledge, such as doctors or chartered surveyors. Each member of the Tribunal will be able to vote on the decision in your case.

In the Tribunals, you do not stand up when you are speaking. The room will feel a little less formal than other courts, although people still wear smart clothes.

### Costs

Different Chambers of the First-tier Tribunal have slightly different rules on when you might have to pay for the cost of the lawyers representing the other party if you lose your case. Under most of the rules, a Tribunal will not require you to pay costs unless you have acted unreasonably, but you should always check this. In the Social Entitlement Chamber and War Pensions and Armed Forces Compensation Chamber, you will never have to pay for the other party's costs.

### Appeals to the Upper Tribunal

If you lose your case in the First-tier Tribunal (FTT) you can appeal to the Upper Tribunal. There are four different Chambers of the Upper Tribunal.

| Chamber | Appeals from the FTT | Other types of case |
|---|---|---|
| Administrative Appeals Chamber | General Regulatory Chamber | Appeals against decisions of the Traffic Commissioners. |
| | Health Education and Social Care Chamber | Appeals against decisions of the Independent Safeguarding Authority. |
| | Social Entitlement Chamber | |
| | War Pensions and Armed Forces Compensation Chamber | |
| Immigration and Asylum Chamber | Immigration and Asylum Chamber | |
| Lands Chamber | (None currently) | Land compensation claims. |
| | | Appeals from Leasehold Valuation Tribunals and Residential Property Tribunals. |
| | | Appeals concerning land value. |
| Tax and Chancery Chamber | Tax Chamber | References from decisions of the Financial Services Authority (not an appeal). |
| | General Regulatory Chamber (charity cases only) | References from decisions of the Pensions Regulator (not an appeal). |

However, you can only appeal to the Upper Tribunal in certain circumstances. It must be an appeal on a 'point of law'. This means you can only go to the Upper Tribunal if you are arguing that the judge got the law wrong when he decided your case. You cannot usually appeal to the Upper Tribunal just because you think the decision was wrong or because the judge did not believe you.

Because you can only appeal a 'point of law', you must ask for permission to carry on with your case if you have lost. You should first ask the judge of the First-tier Tribunal if you can appeal their decision, explaining why you think they have got the law wrong. If they refuse, then you can ask a judge of the Upper Tribunal to give you permission.

The amount of time you have to appeal a decision can be different depending on which Chamber of the First-tier Tribunal your case was in. You should check the rules of that Chamber and of the Chamber of the Upper Tribunal that your appeal would be heard by.

As with the First-tier Tribunal, each of the different Chambers of the Upper Tribunal has procedural rules that you should follow. Usually, the rules of the Upper Tribunal will be very similar to those of the First-tier Tribunal Chamber that you have appealed from. The rules can be found at www.justice.gov.uk/Tribunals/rules.

**Further information about the Tribunals**

You can find a lot of helpful information for free through the Tribunals' websites at www.justice.gov.uk/Tribunals.

If you need more detail on what the procedural rules mean, your local library may be able to help you get hold of a copy of *The New Tribunals Handbook* (by Blakeley, Knight and Love) or *Tribunal Practice and Procedure* (by Edward Jacobs).

## What to do if you cannot bring a case in a Tribunal: Judicial Review

If you cannot bring a case in a Tribunal, you may be able to challenge a decision, action or failure to act in the High Court, by a procedure called a 'Judicial Review'. There are also similar challenges in the High Court by what are called 'Statutory Appeals'. These cover specialist areas like planning appeals and public procurement challenges, and are beyond the scope of this Guide.

**Limits on your right to bring a Judicial Review**
There are a number of important limits to note regarding when you can bring a Judicial Review challenge.

You can only bring Judicial Review proceedings if you do not have a reasonably convenient alternative remedy. This is why you cannot go to the High Court if you have the option of going to the First-tier Tribunal (or if you have a Statutory Appeal).

There are **very strict time limits** in Judicial Review cases. You have to bring your challenge within three months of the decision that you are challenging. You are also required to bring it 'promptly' within those three months. This means you have to bring the claim as quickly as you can within the three month period. You may be able to get time extended if you fail to meet the time limit, but only for 'good reason', for example, extreme ill-health.

You have to have some kind of interest in the decision that you want to challenge. Lawyers call this having 'standing'. This means that if a decision is made that affects somebody who has nothing to do with you, you may not be allowed to challenge it. If it affects you or a member of your family directly, you will be able to challenge it. You may also be able to bring a challenge if it is considered to be in the public interest that you do so. If you are bringing a human rights challenge, then the rules are stricter. You have to be a direct victim of the human rights breach.

### Decisions can you challenge via Judicial Review

You can only judicially review the decisions of public bodies, and only when they are acting in their public capacities. You may be able to bring human rights challenges to a private body exercising a public function. There is no complete list of what is or is not a public body (or what counts as a public capacity of such bodies). But broadly speaking, it includes decisions by:

- Government Ministers, departments and agencies
- Public regulatory bodies
- Local and health authorities
- Chief constables and prison governors
- Some Tribunals (but only if you cannot appeal to a higher Tribunal or court)
- Magistrates, coroners and county courts (but only if you cannot appeal to a higher Tribunal or court), and
- School Governor Boards (but not independent schools).

### Grounds for challenging a decision or action using Judicial Review

Judicial Review can only be used to challenge decisions on the grounds that they were made in an unlawful way. The High Court will not decide whether the public body has made a "good" decision or not. Instead, it will consider whether the decision was **outside the legal powers of the decision-maker**. Lawyers say that what the decision maker did was 'ultra vires'. This simply means that the decision was beyond the powers of the decision maker. This may be because it was:

- **Based on an error of law**. This could be any situation where the decision-maker has misunderstood or misapplied the law. For example, the decision-maker might have refused to do something because they thought they had no legal power to do it, when in fact they did have the power to do it
- **Done for an improper purpose**. What is a proper purpose will depend on the situation, and the court will consider this in the given circumstances.

- **Taken when the decision-maker had not taken into account relevant matters or had taken into account irrelevant matters**. The court will look at the situation and consider what the decision-maker should have taken into account in the given circumstances.

- **Affected by unlawful limits placed on the exercise of the decision-maker's discretion**. Sometimes the law will give a decision-maker a lot of freedom to make a particular decision. If the decision-maker then creates excessively strict rules for themselves about how to make the decision they may be found to have improperly limited their freedom to take the decision. In other words, they may have created an excessively strict policy that has limited their ability to be flexible. Lawyers call this "fettering their discretion".

- **Irrational**. The court can reverse a decision if it is so unreasonable that no reasonable public authority would ever take it. This is a roundabout way of saying that the decision was extremely unreasonable, to the point that it was absurd or perverse. This is a much higher standard than simply saying that the decision was wrong or not reasonable.

- **Made in breach of your legitimate expectations**. If you were clearly promised something (or given such a strong signal that it almost added up to a promise), it may be unfair for a decision-maker to go back on that promise without sufficient justification, or without giving you a Hearing first.

- **Based on an unfair process**. This might mean that you were not given a fair opportunity to explain your arguments to the public body. It also might mean that the decision-maker was in some way biased. It might mean the public body should have given you reasons for its decision, but failed to do so.

- **Contrary to the Human Rights Act 1998**. You should look at the Human Rights Act. The organisation Liberty also provides some helpful information and an advice line about the Act: www.yourrights.org.uk/get-advice/.

## What you can get from Judicial Review

Even if you win your case, the court will not necessarily give you any remedy at all. The court has the freedom to decide, and will consider factors such as whether you acted promptly, whether you acted in good faith and whether you have been harmed by the decision.

If you win your case, the court **may** award six different kinds of remedy. These are:

- **Quashing Order**: A quashing Order overturns or undoes a decision that has already been made.

- **Prohibiting Order**: This stops a public body from taking an unlawful decision or action it has not yet taken.

- **Injunctions:** This is also a restraining Order, which, for example, stops a person from acting in a public office in which they have no legal right to act. The court may also grant an 'interim injunction'. This is a temporary Order requiring a public body to do something or not to do something until a final decision has been made in your case. There are detailed rules as to when an interim injunction is appropriate.

- **Mandatory Order**: This makes a public body do something that the law says it has to do. Normally, if the public body is ordered to make a decision, it will still be free to decide whatever it likes, as long as the decision is taken lawfully.

- **Declarations:** The court can state what the law is or what the parties have a right to.

- **Damages:** Damages may be awarded where a public body has breached your human rights. Otherwise, the court will not normally give you any compensation if you win your case, unless you have some other entitlement to damages.

It is important to remember that the court will not normally make the public body's decision for it, even if you win your judicial review. Very often, after a Judicial Review, the public body will have to retake the decision and you may still not get what you want. They will just be obliged to follow a fairer process the second time round.

### What you can lose from Judicial Review

If you lose your case, you will usually have to pay the public body's 'reasonable' costs of defending the claim. **These can be very high.** This is one of the reasons why it is so important to try to seek specialist advice about your case at an early stage if you can. At every stage throughout your claim, think about the costs that the public body will be spending. This may affect your decision to keep fighting at the next stage.

If it is in the general public interest that you bring a claim, you should apply to the court for a Protective Costs Order. This is an Order given by the court at the beginning of the case that even if you lose you will not have to pay the public body's costs above a certain level.

### What to do before bringing your Judicial Review claim

If (but only if) you have time before the three month time limit (and the requirement of promptness) runs out, you should write to the public body, following the format set out in the 'Pre action protocol': www.dca.gov.uk/civil/procrules_fin/contents/protocols/prot_jrv.htm. This is called writing a Letter before Claim.

The letter should:

- Explain in detail what you say the public body has done wrong
- Ask for detailed reasons for the decision or (if you have them) a response to your letter within a time limit, usually 14 days, and
- Threaten Judicial Review if you are not sent reasons or if the reasons do not satisfy you that the decision or action was lawful.

This Letter before Claim may encourage the public body to do the right thing before you get to court. If time is short, it is still a good idea to make telephone contact with the public body.

## How to bring your claim

Claims for Judicial Review are made in several stages.

### The application

First, you make your written application to the court. This includes paying a court fee. As with any application to a court, you need to explain your case in clear, simple terms. Specifically, you must identify: what decision or action you are challenging; the date of that decision or action; your grounds for challenging it; whether the case is urgent and if so any relevant time limits; and if necessary any application for temporary relief (like an interim injunction) pending final determination of your claim (the final decision made). The application is made on form N461 (found under www.justice.gov.uk/courts/procedure-rules/civil/forms), and is often accompanied by written evidence.

### The first permission stage

This allows the court to filter out cases that should not be allowed to go to a full Hearing because they are so unlikely to succeed. A judge will read all the papers sent in by both parties and decide whether your case will be allowed to go ahead. You will not be given permission to have a full Hearing if the judge decides that you do not have an arguable case or that for some other reason, the

case cannot succeed, for example, you have not met the time limit. You will be told the result by post. If you are unsuccessful, the judge will give short reasons for why that is so. Sometimes, the judge does not decide but refers the case to the second permission stage.

### The second permission stage

If you are refused permission, you may decide that it is time to stop. You should consider carefully why you were denied permission and whether you accept that the reasons given were correct. If you still wish to carry on, you have a right to a Hearing in court to try to persuade a judge in person that you should be granted permission. The Hearings are usually quite short, often around half an hour.

### The third permission stage

If you are still not granted permission, you might try to appeal the Court of Appeal. However, you should think hard about doing this. It is unlikely to succeed and will increase the public body's costs substantially, which you may well end up having to pay.

### Full Hearing

If you are given permission, you will need to pay another fee within seven days of being given permission. There will be more exchanges of written evidence. Then, when all parties are ready, and when the court has time available, the case will be listed for a full Hearing so the court can listen to the arguments on both sides. Full Hearings in the High Court are very formal. You stand when you speak and when the judge enters and leaves the room. Barristers will be wearing wigs and gowns. Try not to feel intimidated. Nobody expects you to speak or look like a lawyer. Just explain the case as simply and as clearly as you can.

Claimants currently wait between six months and one year for a case to go to a full Hearing, although urgent cases can be heard within 24 hours if necessary. However, the first 'permission' stage of the proceedings may only take a few weeks. Often, if you are granted permission, public bodies will compromise and deal with your concerns to avoid the case going to court.

## Further information about Judicial Review

A charity called the Public Law Project provides a lot of useful resources on how to bring a Judicial Review claim: www.publiclawproject.org.uk/AdviceGeneral.html.

A number of specialist solicitors' firms also provide short Guides to the process. For example:

- www.deightonpierceglynn.co.uk/resources/pdf/Judicial_Review_Procedure.pdf
- www.leighday.co.uk/LeighDay/media/LeighDay/documents/JR-Quicky-and-Easy-Guide.pdf?ext=.pdf
- www.bevanbrittan.com/articles/Pages/GuidetoJudicialReviewincivilmatters.aspx

There are lots of books about Judicial Review. Most of them are difficult to understand if you are not a lawyer, however we recommend *Judicial Review: A Practical Guide* (by Southey, Weston and Bunting). There is also a chapter on Judicial Review that might be helpful in *The New Tribunals Handbook* (by Blakeley, Knight and Love). You can also find more if you Google: "Guide to Judicial Review".

# Housing law

Housing law covers a wide range of issues, from homelessness and Possession Proceedings (when another party reclaims your property), all the way through to grants used to adapt properties for disabled persons.

Certain areas of housing law are still within the scope of legal aid (for example, certain Possession Proceedings and assistance for the homeless) so you should always check first with a solicitor whether legal aid might be available. There is also a range of excellent, free, resources on housing law available on the internet, in particular, provided by the housing and homelessness charity, Shelter, (www.shelter.org.uk). The Legal Action Group also publishes law books on housing aimed at non-lawyers (for example, '*Defending Possession Proceedings*', and '*Repairs: tenants' rights*').

This Section only deals with two of the most common areas of disputes about housing, Possession Proceedings (which is explained below) and cases of disrepair to rental property. In some circumstances you may still be able to get legal aid for these sorts of cases, so you should always check.

## Possession Proceedings

If you fall behind with your rent or mortgage repayments, your landlord or lender can start court action to get back whatever money you owe them. These are called Possession Proceedings and can lead to you losing your home. In this case the landlord or lender is the 'claimant'. If a claim is brought against you, this is called a Possession Claim.

There is a range of different kinds of claims regarding possession which can be brought against people occupying residential property, depending on the nature of what is called their 'right to occupy' a property. The most common types are discussed below. There are three pieces of advice which apply regardless of what sort of claim you are facing:

1. You should always try to attend the Possession Hearing, where your case will be initially discussed. Judges have lots of experience in dealing with possession claims and, in many cases, have relatively generous powers to allow you to stay in your home. If you are not present and therefore not able to explain your circumstances to the judge, then it is very likely that an Order will be made against you.

2. In some courts, there may be a 'duty solicitor' present who is paid (not by you) to assist those facing Possession Hearings each day. If you do not attend court, you cannot make use of this service.

3. Try to seek advice about your case as early on as possible. Legal aid is still available for most Possession Proceedings. There are also many advice agencies (such as the Citizens Advice Bureau) which have a great deal of experience in helping people to stay in their homes. It is often possible to reach a negotiated agreement before any Possession Hearing, particularly where the claimant is a social landlord (for example, a landlord who is renting out council or housing association owned property).

## Mortgage possession claims against an owner / occupier

If you are behind with your mortgage repayments, your lender may issue proceedings (the legal way for saying a case against you will begin) against you, seeking an Order for Possession of your home, which is a court Order that might lead to your home being taken from you. In most cases the crucial issue is whether you are likely to be able to repay the amount you are behind by within what is known as a 'reasonable' period of time, which can be as long as the remaining term of your mortgage. You need to be able to explain to the judge why you fell behind in your repayments (this is called falling 'into arrears') and how you plan to pay the lender back, and at the same time meeting the normal monthly instalments. For example,

if you have lost your job and been out of work for six months, but have now found work, and can manage as a result to pay £50 per month off the arrears, on top of the normal monthly mortgage instalments. You should, if possible, bring evidence to support your explanation (such as the letter offering you a new job, wage slips, etc).

If the judge is satisfied that you are able to repay the arrears within a reasonable period of time he or she can either:

- Adjourn (end) the case on the condition that you pay your normal monthly instalments plus a portion off the arrears each month, or

- Make a Possession Order that will be suspended so long as you pay your normal monthly instalments plus a portion off the arrears each month. The second Order is more common. It means that although according to the law the lender is given the right to repossess your home, they cannot exercise that right if you keep making the payments which the Possession Order sets out.

If you are not able to repay the arrears within a reasonable period of time, you should seek debt advice from a specialist debt advisor (see the Bankruptcy and Debt section in this Guide). For example, it may be in your best interest to seek to sell the property to repay the mortgage.

### Mortgage Possession claims against the tenant of a borrower

If you are renting your home from a landlord who has a mortgage on the property, and if the landlord has stopped paying the mortgage, the mortgage lender may take steps to repossess the property from the landlord, as described above.

Except in relatively rare cases (for example, if your tenancy pre-dates the mortgage), it is unlikely that you will have a substantive defence to the claim for possession from the mortgage lenders. You do, however, have a right to apply to the court to be given up to two months in order to make arrangements to leave the property before the possession occurs. Many mortgage companies will consent to giving you this time once your application is made. The court will normally make it a condition that you pay your rent directly to the mortgage company during these two months.

### Private sector Possession Claims

If you are the tenant of a private sector landlord (an individual who owns a property and rents to an individual), then it is likely that you have an 'assured shorthold tenancy', which means that your tenancy has a limited amount of security. However, it is possible that you have another form of tenancy (for example, a 'fully assured tenancy' or a 'Rent Act 1977 tenancy'). If you are unsure about your tenancy status you should seek advice from a solicitor or the Citizens Advice Bureau. You should also read up on your type of tenancy to ensure you understand it.

There are two different routes which a landlord might use to try to evict you (essentially, remove you from living in the property) under an assured shorthold tenancy. The first is to serve a notice under section 21 of the Housing Act 1988. This entitles the landlord to a Possession Order so long as he has given you the required amount of notice (usually two months). So long as the notice is valid then the court **must** make a Possession Order, and you will be forced to move out. There are certain limited restrictions on when a landlord can use a section 21 notice (for example the landlord would have been required to protect the deposit you paid in accordance with the rules of a tenancy deposit scheme), but these are likely to be fact-specific and are not covered in this Guide. If you are given a notice under section 21 of the Housing Act 1988 and do not wish to leave the property, you should seek advice from a solicitor, the Citizens Advice Bureau or a similar advice centre. Be aware that advice from a solicitor will incur costs.

*Be sensible about the arguments you make: if you argue bad points that are difficult to comprehend or stretch the truth, you will have a harder job convincing the judge.*

The second option is for the landlord to serve a notice under section 8 of the Housing Act 1988. This will refer to one or more 'grounds' for possession, that is, reasons for eviction.

The most common are grounds 8, 10 and 11 (all of which relate to rent arrears), so you should try to read them. In the case of grounds 10 and 11, the court will need to be satisfied that:

- The ground is 'made out' (which means the facts alleged in the notice are proved to be true)
- It is reasonable to make an Order for Possession, and
- It is reasonable to make an immediate Order for Possession, as opposed to an Order which is suspended on terms (dependent upon you keeping to certain conditions), such as, payment of future rent and arrears.

In the case of ground 8, however, once the ground is made out, the court has no choice but to make an Order. You must check the notice carefully to see what ground(s) are referred to and, again, seek immediate advice as to what can be done to avoid a Possession Order being granted.

**Tenants of local authorities**
Local authorities can operate a range of tenancies including secure tenancies, non-secure tenancies, flexible tenancies, introductory tenancies, demoted tenancies and family intervention tenancies. You should look up these terms on the internet. The most common kind of Possession Proceedings involves a Secure Tenancy, where the authority is seeking possession because you have not paid your rent. The other types of tenancy are more complex and are beyond the scope of this Guide.

The process for evicting a tenant starts with the service of a 'Notice Seeking Possession', this means you are given a notice which will set out the nature of the claim against you (for example, not having paid your rent). You should immediately contact your housing officer to discuss the notice. In many cases, you can usually reach an agreement with the housing officer to let you remedy the problem without the need for further court action.

If you cannot reach an agreement outside of court with the local authority, they can issue Possession Proceedings, but in order to make a Possession Order, the court must be satisfied:

- That a ground for possession is made out (for example, ground 1 regarding rent arrears)
- That it is reasonable to grant an Order for possession, and
- That it is reasonable to make an outright Order instead of one which is suspended subject to certain terms being met (such as repayment of any arrears).

In many cases, if you can explain to the judge why the problem arose (for example, problems with renewing a housing benefit claim or temporary unemployment) and make proposals to resolve whatever the problem is, the judge will be prepared to make a Suspended Possession Order, meaning that you cannot be evicted so long as you keep to the terms of the suspension.

**Tenants of housing associations**
Housing associations usually have either assured shorthold tenancies or fully assured tenancies. If you have an assured shorthold tenancy, then please refer to the 'Private sector Possession Claims' heading, above. In the case of a fully assured tenancy, the procedure is similar to that set out for local authorities (explained above).

## Disrepair

Your landlord owes you certain obligations with regards to the physical condition of the property. These are sometimes set out in the tenancy agreement. In any event, regardless of what the tenancy agreement says, the obligations in section 11 of the Landlord and Tenant Act 1985 are implied as part of that agreement. The landlord is under an obligation to ensure that the structure and exterior of the property is in good repair. There is also an obligation to ensure that things like the pipes for supplying water and gas are in good working order.

It is important that any problems are raised with the landlord as soon as you become aware of them. You should also keep a record of each complaint in a diary, setting out who you spoke to, what you told them, etc. If your landlord does not carry out the repairs within a reasonable period of time, then you must send him or her a formal letter before legal action can begin, setting out the nature of your complaint (what you feel the disrepair is) and what repair works you require to be done which you feel have not been, even though you have asked. At this stage, you should also make a note of any compensation you think you are entitled to as a result, which you can calculate by looking at how much your rent is, and what percentage of it you feel you should not have had to paid because of the level of disrepair – the third bullet point below gives an example of how you can calculate this).

If the landlord still does not respond, you may wish to issue proceedings in the County Court. You will need to prove that:

- There is some disrepair to something that the landlord is obliged to repair. In some cases, this will be obvious (for example, a photo of a hole in the wall), but in most disrepair cases, it is necessary to obtain a report from a surveyor or environmental health consultant, which can incur significant costs to you.
- The landlord has been given notice of the disrepair and has failed to rectify it. This is why it is important to keep records of things like who you complained to, and
- You have suffered loss and damage. This can take the form of damage to items (for example, clothes damaged by water penetration), additional living costs (such as increased heating bills because the property was damp, or take-away food bills because it wasn't safe to cook), and loss of enjoyment of the property (this is generally easiest to explain as a proportion of the rent; so if the rent is £1,000 per month, but the kitchen and bathroom were uninhabitable owing to disrepair, then you might seek 'damages' (compensation) of £600 per month, representing the difference between the rental value of the property and the actual value, given its condition).

If the works are still not carried out then you should also seek to achieve an injunction requiring the landlord to do them.

In certain circumstances, disrepair claims are still eligible for legal aid. In addition, many solicitors undertake disrepair cases on a 'no win, no fee' basis, however, you should always be clear before entering any such arrangement, what fee you will be expected to pay should you win the case.


# Bankruptcy and debt law

If you cannot repay the debts that you owe, you may be made bankrupt. This is a formal process administered by the court, and will mean that (with some exceptions) your existing debts are wiped out, but your assets are taken away to meet those debts.

The most common situations in which you can be made bankrupt are at the request of someone to whom you owe money (called a 'creditor's petition') and at your own request (a 'debtor's petition').

When a Bankruptcy Order (an Order from the court, making you officially bankrupt) is made, a person, called the 'Official Receiver', who is a public servant, or in some cases a 'trustee', is appointed to collect the money and other things you own (but not the basics you need for everyday life) and to pay your creditors. For example, if you own your home, the Official Receiver / trustee might sell it. During your bankruptcy, there will be some limits on what you can do ('bankruptcy restrictions'), for example you cannot be a company director and you may need to tell certain people that you are bankrupt. For the year after you are made bankrupt, the Official Receiver / trustee has the right to claim certain income that you earn to pay your existing debts. However, after the expiry of that period, you are discharged (released) from your state of bankruptcy which will mean that you are free, with some exceptions, from your old debts.

For some, bankruptcy represents the only way that they will free themselves from debts which they will never be able to repay. However, it is not the easy answer to debt problems. If you own your home, bankruptcy will normally mean that you lose it, which means that your family may be forced to move. In addition, a Bankruptcy Order will seriously impact your ability to raise money in the future, and former bankrupts can find it impossible to get a mortgage, credit card or unsecured loan, or sometimes even to open a bank account.

Bankruptcy is a very technical area of law, and procedure is important. Judges understand that it is difficult, and will try very hard to help people representing themselves in court. Help is available, both for a fee and for free, for example, from your local Citizens Advice Bureau, www.gov.uk/bankruptcy, the National Debtline (www.nationaldebtline.co.uk) or StepChange (www.stepchange.org). Some organisations will offer to help you without an upfront fee (sometimes they advertise on the radio or the internet), but if you do speak to such companies, you should **always** ask whether there will be further fees at a later date.

If you are facing any type of debt problem, it is very important that you get help at an early stage. Many people with debt problems put their head in the sand and seek help at the last minute, when it may be too late to sort things out.

## Debtor's petitions – bankruptcy at your own request

Bankruptcy should be a last resort. You should first consider asking those who you owe money to for some time to pay them back. In addition, there are various formal mechanisms for ring-fencing your debts such as 'Debt Relief Orders' and individual voluntary arrangements.

If you are still struggling with your debts, you can ask the court to 'declare you bankrupt'. You can get the forms that you need from: www.gov.uk/bankruptcy/applying-for-bankruptcy. Many people complete the process on their own, but get some, often free, advice along the way. It is very important that you complete the form accurately and truthfully, because inaccurate or untruthful answers can have very serious consequences. If you are made bankrupt, the trustee will look very carefully at anything you did with your assets in the years leading up to the bankruptcy, in particular if you have recently paid off debts to friends or family, or given money or assets away.

## Creditor's petitions – at the request of someone you owe money

The process is relatively complicated so you should try to get help if you can. There are in essence two stages if a creditor wants to make you bankrupt.

1. In the first stage, the creditor must show that you are unable to pay your debts. There are two ways a creditor can show this:

   a. If they send you a 'Statutory Demand' (an official letter telling you how much you owe and giving you 21 days to pay), and you do not pay or have the demand 'set aside' (see below), or

   b. If they obtain a court Order against you specifying the amount of the debt and they are unable to get you to pay. Some creditors do both and obtain a court Order first and then serve a Statutory Demand.

2. Once the creditor has completed the first stage, the second stage is that the creditor can start a 'Bankruptcy Petition' at court (this is a request to the court to make you bankrupt).

*Legal problems can be very emotionally draining. Try to remain calm and be civil with the other party and respectful of the judge and all others present in court.*

## The Statutory Demand

If the creditor has served you with a Statutory Demand, you are entitled to go to the Bankruptcy Court to ask to have it set aside, if:

- The creditor owes you an equal or higher amount of money
- You have substantial grounds for saying that the debt is not due (if you agree that part of the debt is due, you should pay that part)
- The creditor holds enough security (for example, a charge over your house; although the creditor can choose to give up this security if they wish), or
- There are other important grounds that mean the demand should be set aside.

If you have a defence to the debt (a reason why you have debts, but do not have to pay the amount claimed), then you should apply to set aside the Statutory Demand. It is always far better to run a defence at the Statutory Demand stage rather than the Bankruptcy Petition stage. If you fight at the Statutory Demand stage and lose, you have a short period in which to pay the debt before the creditor can start a Bankruptcy Petition. Once the Bankruptcy Petition starts, a notice will be placed on the Land Registry in relation to any property you own. This means that if you fight and lose at the Bankruptcy Petition stage, you might find it very difficult to raise finance to pay the debt.

Decide what your position is in the very beginning: if, for example, you ask for time to pay, it is difficult to say later on that you dispute the debt. Be sensible about the arguments you make: if you argue bad points, the creditor's costs will increase and that will increase the debt that you have to pay. In many bankruptcy cases, the legal costs exceed the value of the debt, so if you fight a debt that you could afford to pay and you lose, you could find yourself facing a Costs Order you are unable to pay. Try to look at the case objectively and critically. For example, you may have run up large credit card debts because of personal problems. That does not mean that you do not have to pay the debt, but you could try explaining the situation to the credit card company and asking for time to pay. The court will usually give you time to pay if you feel you can, and if you do not have a good defence, it is usually better to try to negotiate time to pay than to argue bad points and lose.

If you choose to apply to the court, you should do so within **18 days** of being served with the demand. The Statutory Demand will tell you how you can apply to the court. If possible, though, you should try to speak to your creditor first to try to come to some agreement.

If the Statutory Demand is based on a court Order (for example, a County Court judgment or Magistrates' Court liability Order for council tax), the Bankruptcy Court will not hear arguments about whether there was a defence to the underlying debt. In those circumstances you should apply to the appropriate court (not the Bankruptcy Court) to set aside or appeal the underlying court Order, and you should get advice on whether to apply to set aside the Statutory Demand. The Bankruptcy Court may allow you time to pursue an appeal or an application to set aside the Order, but it will usually need to see some evidence that you are taking the appropriate steps, and be advised of progress. Be prepared to show the court copies of the documents relating to your application or appeal and to advise the Bankruptcy Court of any future Hearing dates.

## The Bankruptcy Petition

A creditor can present a petition only if:

- You owe a definite amount payable either now or sometime in the future
- You owe £750 or more
- You cannot pay the debt, and
- You have not applied to set aside a statutory demand sent to you in connection with the debt.

If you have not applied to set aside the statutory demand, the creditor can present the Bankruptcy Petition **21 days** after the Statutory Demand is served on you.

If the creditor moves on to the second stage (Bankruptcy Petition), you can still defend the claim and the grounds of defence are essentially the same (although there are some procedural defences too). Again, if the claim is based on a court Order, and you have a defence, you should apply to set aside or appeal that court Order. If you have previously applied to set aside the Statutory Demand and lost, you cannot run the same points in defence of the Bankruptcy Petition.

## Hearings of applications to set aside Statutory Demands and Bankruptcy Petition Hearings

Applications to set aside Statutory Demands and disputed Bankruptcy Petitions are generally dealt with by the courts in the same way. You will be permitted to attend court to make representations to the judge but the judge will expect all of the evidence to be given to the court, in writing, in advance of the Hearing. There are two main forms of evidence that the court will consider: **underlying documents** (such as letters, emails, bank statements, agreements) and **witness statements** in which those involved in the dispute set out their version of events. Each side can decide what evidence they want to put in and you should think carefully about who had first-hand experience of the issues in dispute and who could support your case. You should also try very hard to pull together the relevant documents and this may mean trying to get copies from other people if they are not in your possession. All of this work must be done well in advance of the Hearing.

In an application to set aside a Statutory Demand, you will need to give the court what you can when you issue the application, but given you should lodge the application within 18 days of being served with the demand, it can be very difficult to get everything together in that time period. The court will normally in those cases give you a further opportunity to put more evidence in. In a Bankruptcy Petition case, the judge will set a timetable for the parties to prepare their evidence. In both types of cases, the court will expect you, at the time that you give it to the court, to send your evidence to the creditor. The creditor will also have to send their evidence to you.

It is very important to remember that the Bankruptcy Court does not hear oral evidence from witnesses and so, if you have a point to make based on the facts, you should do this in a witness statement (i.e. written, not spoken). Remember, as the first sections of this Guide note, you have to have given the court and the other party copies of all your documents in advance, as the court will not normally be willing to hear your version of the facts for the first time, in court.

In cases where there is a dispute over whether the Statutory Demand or the Bankruptcy Petition was served (given or sent to you), the practice is slightly different. In those cases, you should still raise your defence and send your written evidence to the court in advance, however, at the Hearing, the court will want to hear oral evidence on the question of service (from you and the person who claims to have served you). In these circumstances, the court will allow for both of you to be cross-examined on your evidence at the Hearing.

Be cautious about taking points on the service of the Statutory Demand or the Bankruptcy Petition. Both are meant to be personally served but there are a number of circumstances in which the creditor will be permitted to serve the document by another method (such as post). It is possible that the creditor complied with the court rules on service even though the document may not have come to your attention. If you are thinking about challenging service, it is worth remembering that it is very common for service to be disputed and judges generally take a lot of persuasion that a person was not served. In addition, raising a dispute over service is likely to increase the costs, and you will have to bear those costs if you are unsuccessful in persuading the court that you were not served. You should also remember that errors in service (and other procedural errors) can usually be corrected so generally the only advantage in taking procedural points is that you delay the pursuit of the creditor's claim.

## Payment of the debt

Even if you think that you have a good defence to a creditor's claim against you, you should always think carefully about whether it makes sense to try to reach an agreement with the creditor. You should also be aware that there are cost consequences of disputing the creditor's claim at court. If you apply to set aside a Statutory Demand or dispute the creditor's Bankruptcy Petition and are unsuccessful then the court is likely to order that you pay the creditor's legal costs. These can run into thousands or even tens of thousands of pounds. In some cases, the legal costs will far exceed the value of the underlying debt. This may mean that whilst you may have been in a position to pay the underlying debt, you cannot afford to pay the legal costs as well. A failure to pay legal costs ordered by the court can itself be used as a basis for a Bankruptcy Order so you should think very carefully about the merits of your position before disputing the creditor's claim at court.

In cases where the level of the creditor's claim is close to the £750 threshold, you could pay part of the debt to reduce the debt below that level as that will then mean that the creditor cannot bring a Bankruptcy Petition against you.

## Once a Bankruptcy Order is made

If you are made bankrupt, it is very important that you cooperate with the Official Receiver or the trustee in charge of your bankruptcy.

There are two possible bases for applying to annul (cancel) a Bankruptcy Order. You can apply either because you feel that there are good reasons for saying the Bankruptcy Order should not have been made, or because you have paid or secured all of your debts (not just the amount you owed to the creditor who made you bankrupt). If you apply to annul on the first basis, the grounds (reasons) are largely the same as if you were disputing the Bankruptcy Petition before the Bankruptcy Order was made, and you will need to organise your evidence in the same way and the guidance set out above should be helpful. If you apply to annul on the second basis, you will need to give the court full disclosure of all your debts and provide evidence that they have all been paid or secured ahead of the Hearing. Applications on the second basis are particularly difficult. You should try to get specialist advice if you apply to annul on either basis.

You must act quickly if you wish to annul, because the bankruptcy costs will start to add up. You can ask the Official Receiver or trustee if they will hold off from working on the bankruptcy while you make an application to the court, but you must still cooperate with them. If your application does not succeed, you are likely to face a further costs Order. This will fall outside the bankruptcy and would mean that you had a new debt to pay.

The trustee may seek to sell your home. This is a difficult area of law, and you should seek specialist advice.

Sometimes, a challenge is made to the fees charged by the trustee. If you wish to make such a challenge, you should also seek specialist help, because this is a difficult area of law. A trustee's fees will often seem high, but a challenge will not necessarily succeed.

# Glossary of terms

**Adjourn –** a pause in court proceedings, or to put off the Hearing of a case to a later date.

**Admissible** – describes what evidence and documents may be given or referred to in the court proceedings.

**Affirmation** – if you have no religious belief you will be asked before you give evidence to promise to tell the truth.

**Allegation –** an assertion or statement that someone has done something that has not yet been proven, which must be, as part of the proceedings.

**Appeal** – the process of asking a senior court to reconsider your case if you are not happy with the outcome. Sometimes you will need to be given permission before you can appeal.

**Bar Council** – the Bar Council represents barristers in England and Wales. It is also known as the General Council of the Bar and is the Approved Regulator of the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

**Barrister** – a lawyer who can give specialist legal advice and who represents people in court.

**Bench** – the judge/judges, often called the 'judicial bench' or 'magistrates'.

**Bring a claim** – to start legal proceedings.

**Bundle** – the file of papers you must take to court which includes any documents you want to refer to. Identical bundles must be sent to the judge and the other party and must be numbered by page (paginated) as one single document.

**Case** – describes the legal proceedings generally or the particular claim or defence that is being put forward by one of the parties.

**Civil law –** the branch of law which deals with private disputes between individuals, organisations and companies. It covers most areas of law except for criminal law.

**Civil Procedure Rules (CPR)** – the Court rules that all civil cases must keep to.

**Claim** – what you are asking for when you start legal proceedings.

**Claimant** – the person making and serving (sending) the claim.

**Clerk** – chambers staff responsible for generating and assigning work and managing barristers' diaries. Also a term used to describe court ushers or assistants.

**Client Care Letter** – a letter sent to you by a lawyer who has agreed to assist you, which sets out their fees, whether you need to provide them with further information or documents. It may also include details of your instructions and the basic facts of your case which you have told them.

**Closing submission** – an oral summary of your main points, which you give at the end of your Hearing.

**Compensation** – money awarded to the winning party, usually paid by the losing party.

**Conditional Fee Agreement (CFA)** – This is a 'no win, no fee' agreement, under which the fee is only payable by you if you are awarded compensation and can be only be enforced if it complies with strict rules.

**Contempt of court** – when a party is in breach of a court Order and is liable to be fined or imprisoned.

**Counsel** – a barrister.

**Counterclaim** – if you are filing a defence and believe the claimant owes you something, then you can prepare a claim of your own, along with your defence.

**Court usher** – a court official whose duties include swearing-in witnesses and keeping order.

**Criminal law** – the area of the law which deals with people who have broken the law, resulting in a penalty such as imprisonment or a fine.

**Cross-examination** – the questioning of a witness for the other party in a case.

**Crown Prosecution Service (CPS)** – the primary (Government) body responsible for the prosecution of criminal offences in England and Wales.

**Damages –** another way of saying compensation.

**Defence** – the court document which sets out why you say you are not liable or not at fault when the claimant has stated that you are. It responds point by point to the claims against you. When you send your defence to the court, this is called 'filing a defence'.

**Defendant –** a person who appears in court because they are being sued, standing trial or appearing for sentence; sometimes also called a respondent.

**Direction** – instructions given by the judge.

**Disclosure –** the process of showing the other party documents that you intend to use in court to support your case or which are otherwise relevant, even if they do not support your case and might support the other party's case.

**Dispute** – a disagreement.

**Dispute resolution** – the process of resolving disputes between parties outside of court, sometimes with the help of a mediator.

**Duty solicitor** – a solicitor paid for out of public funds to assist those facing Hearings who attend without representation.

**Evidence –** information which can prove what you are saying is true.

**Evidence-in-chief –** this is when a witness is asked questions by whichever party has called them to give evidence.

**Expert evidence –** any expert who can offer their specialist knowledge as evidence, for example a doctor who can vouch for illness.

**Extension of time** – when the court gives more time to a party to comply with or obey court procedures or orders.

**Fixed-fee** – costs which are capped at a certain level.

**Floater** – when a case does not have a specific Hearing date or time.

**Hearing** – proceedings held before a court.

**Higher Rights of Audience** – the right of a lawyer to represent someone in court. All barristers have higher rights of audience, and now solicitors can also have these if they pass a training course.

**Inadmissible** – describes evidence or documents which cannot be referred to in court proceedings.

**Injunction** – a legal Order which stops someone from doing or continuing to do something, or which requires them to take certain positive action.

**Instruct** – agreeing with a lawyer that he or she will advise or represent you in relation to a legal matter or dispute.

**Issues** – the main points, both factual and legal, which have to be decided in a case.

**Issue a claim** – formally start legal proceedings by sending (or 'serving') a claim.

**Judge** – an officer appointed to administer the law and who has authority to hear and try cases in a court of law.

**Junior** – a barrister who is not a Queen's Counsel (QC).

**LASPO** – Legal Aid, Sentencing and Punishment of Offenders Act.

**Lay member** – people who do not have a legal background.

**Leading question** – a question which suggests the answer to the witness; you can ask leading questions when cross-examining but not when examining your own witnesses.

**Leave** – another word for permission.

**Legal aid** – public funding for legal advice and representation.

**Legal costs –** the costs that are incurred by a party as part of the process of obtaining legal advice, representation and going to court.

**Legal problem –** a problem where you require legal advice and/or representation.

**Legal proceedings –** the process of a case from start to finish.

**Listing** – the court procedure for deciding when a case should be heard.

**Litigant** – a person who is involved in legal proceedings as either a claimant or defendant.

**Litigant-in-person** – a litigant who does not have a legal representative (like a lawyer) to act for him or her; sometimes referred to as self-represented litigants. Can be accompanied in court by a 'McKenzie friend'.

**McKenzie Friend** – a person, who is not legally qualified, who can accompany you to your Hearing, take notes and help to explain the court process.

**Mediation**- the process of resolving disputes between parties outside of court.

**Oath –** a spoken promise that anything you say will be truthful and honest.

**Open discussions** – conversations with the other party about the management of the case (for example, which documents you will be using for evidence, which can be referred to in court).

**Opponent** – the person you are in a dispute with.

**Order** – an instruction of the court which must be obeyed.

**Other party** – another word for your opponent in a case.

**Other side** – another word for your opponent in a case.

**Particulars of Claim** – the court document setting out your case.

**Pleadings** – the court documents setting out the parties' cases.

**Point of law –** an area of law, rather than fact, which may be relevant to your case.

**Pre-Action Protocols –** the steps that the court will expect to have been taken before a claim or case is 'issued' or has started in court.

**Private law** – the law which covers disputes between individuals or organisations.

**Privilege** – a rule which excludes evidence or documents from being referred to in court because , for example, they relate to communications between a lawyer and his client.

**Pro bono** – legal advice or representation provided for free by lawyers for people who cannot afford to pay and where legal aid is not available.

**Public Access** – your ability to instruct a barrister directly rather than through a solicitor.

**Putting your case** – this is an expression which lawyers use to explain the process during cross-examination of witnesses, when they put their version of events to the witness, and then give the witness an opportunity to respond.

**QC/Queen's Counsel** – a senior barrister who will generally only be instructed in serious and important cases.

**Recorder** – a part-time judge, who is often also a practising barrister or solicitor.

**Representation** – the act of advising and speaking on behalf of a party in a case.

**Self-representing Litigant** – see 'litigant-in-person'.

**Serve a claim** – delivering (by post or in person) your claim form to the person you think is liable in your case.

**Settle outside of court** – coming to an agreement with the other side on how to resolve your dispute, without going to court.

**Signposts** – a clear, verbal 'heading' to outline what you are talking about.

**Silk** – informal term for a QC, so-called because they wear a silk gown in court.

**Skeleton argument** – a document summarising the main issues and arguments in a case.

**Standing** – the legal way of saying that you have a sufficient interest in the decision that you want to challenge.

**Statement of Truth** – a signed statement, as follows: "I believe that the facts stated in this defence/claim form are true".

**Statutory –** from the word 'statute', which is a written law, statutory is a formal requirement to comply with the law.

**Submission** – giving submissions; the argument in a case either in writing or in a speech, as distinct from giving evidence.

**Trial –** when both sides of a dispute come together in a formal court process to present their evidence before a judge for him or her to make a final decision.

**Tribunal** – a Tribunal is a type of court which hears disputes relating to specific areas of law, and delivers judgment on them.

**Underlying documents –** documents which might support your case, such as letters, emails or bank statements.

**Witness** – a person called to give evidence in court because they have knowledge or information about a relevant factual point in the case.

**Witness box** – place where the witness stands to give evidence.

**Witness statements** – a written account by a witness which sets out their evidence.

**Witness summons** – a court Order requiring a person to attend court

**Without prejudice** – a rule which prevents evidence about mediation and settlement discussions being disclosed in court.

**Written submissions** – a summary of your key points, which you take to court. These can also be called 'skeleton arguments'.

## We are grateful to the following organisations for their financial support which helped us to produce this Guide:


Personal Injuries Bar Association (PIBA)


The Commercial Bar Association (Combar)


Family Law Bar Association (FLBA)

This Guide would not have been possible without the team of barristers who voluntarily drafted its contents. We hope that their time, effort and collective knowledge means that many people who find themselves going to court without a lawyer can look to this resource to guide them through the daunting and often very complex process.

There are too many people to thank everyone individually, but particular thanks should go to the Administrative Law Bar Association (ALBA), the Chancery Bar Association (ChBA), The Commercial Bar Association (Combar), the Family Law Bar Association (FLBA), the Personal Injury Bar Association (PIBA), Advicenow and the Bar Pro Bono Unit (BPBU).

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