Police Federation of England and Wales

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# How to take a small claim to the County Court

## INTRODUCTION

### Small Claims

A claim for personal injury where less than £1,000 is likely to be recovered for the injuries themselves is called a small claim. Small claims are dealt with differently from larger claims: they are decided by arbitration and the legal costs which may be awarded are restricted to court fees and a limited amount for medical reports.

Because of this and because, in the past, legal costs have frequently outstripped the value of the award gained for the member, as in your assessed case, the Police Federation considers that it is unable to offer funding in the provision of representation to pursue your small claim further.

However, if your injury gets worse so that it could be worth more than £1,000 or your claim also involves damage to property so that the combined value of your claim including personal injury is £5,000 or more, you should inform your Branch Board Secretary as you may be entitled to legal representation.

### Representing Yourself

If you decide to pursue a small claim you have two options. One option is to employ your own solicitor – but be mindful that, even if you are successful, you may have to pay out as much, if not more, in legal costs as the compensation you are awarded! The second option is to represent yourself. Should you decide to do that, this document is designed as a guide to help you through the procedures.

The County Court has also produced a series of leaflets to help you with various aspects of your claim. You will find them on display at the County Court.

### The Right Words

Let's get the words right first; you are the Claimant, your opponent, is the Defendant. You start court proceedings, by which is meant the arbitration process which, unless settled earlier, culminates in a hearing before the District Judge acting as the arbitrator.

You are trying to show that the Defendant is liable (i.e. to blame) for the injury or damage which you have suffered and you are looking to be compensated by an award of damages. The amount of damages is referred to as quantum – Latin for how much.

## LIABILITY

### Burden of Proof

The mere fact that you have been injured or your property damaged does not automatically mean that you are entitled to compensation: you have to prove that someone was to blame for the injury or damage.

The burden of proof for a small claim is the same as in all civil actions – you have to prove your case on the balance of probabilities and not beyond reasonable doubt as in criminal cases.

### Evidence

You will need to gather evidence to produce at the hearing just as you would have to in a criminal case. Protecting the evidence must be your first priority when even considering making a claim. This involves photographing, measuring and taking statements, e.g;

- Photograph objects such as the frayed carpet or broken chair which caused the accident;
- Measure the dimensions of pot holes, protruding objects etc;
- Take statements from witnesses while matters are fresh in their minds.

### Establishing Liability

Assuming that you have protected your evidence, what do you then have to show to establish liability?

In a road accident case, you would have to show that the driver you are blaming acted negligently. The test for this is the same as for the criminal offence of careless driving, except the burden of proof is the balance of probability rather than beyond reasonable doubt.

The key issues to look out for are the speeds of the vehicles and whether the driver should have anticipated something happening by checking his or her mirror or sounding the horn etc. If you were the passenger and the two drivers concerned are blaming each other, you may have to sue both of them.

If you tripped over a pavement, you will normally have to show that the defect was at least an inch deep. Even then, the local authority has a defence against liability if it can show that it has a proper system of inspection and repair. If the local authority claims this, do not accept it at face value. Ask to see the documents in support, as it may well be that the system is not operated properly.

If you are bitten by a dog, then unless it was a specially trained police or guard dog, you would have to show that it has bitten someone before. The chances are that it has, so ask the neighbours.

Statutory provisions impose liability in some cases. For instance, if you trip over on a defective floor in a building, the Occupiers Liability Act 1957 puts responsibility on the occupier of the building to avoid such defects. If you are injured because you were supplied with a defective product at work, the Employers Liability Defective Equipment Act 1963 might help you, even though police officers are technically not employees.

**Contributory Negligence**

It could turn out that you were partly to blame for the accident yourself. This is known as contributory negligence.

If you trip over something you ought to have seen or were not wearing your seatbelt, you will usually be held 25% to blame. If you turn right off a main road and someone tries to overtake you, even though you were signalling you may well be found partly to blame for not checking your mirror before turning.

Whatever percentage you are assessed as being partly to blame, the same percentage will be deducted from the award of damages otherwise payable.

**Vicarious Liability**

If you are injured as a result of someone else's actions in the course of their employment, you should sue the employer not the employee. This is because employers are what is known as vicariously liable for the actions of their employees.

This means that if you slip on a wet floor at work because it has been mopped by a cleaner and no warning signs have been left, you would sue the Police Authority who employs the cleaner and not the cleaner him or herself.

The Chief Constable of a force is vicariously labile for the wrongful acts of police officers in that force.

## QUANTUM

### Personal injury

How much your injuries are actually worth will depend on their extent and how they have affected you.

There is no firm guidance in case law as to the value of personal injury claims but the District Judge who hears the arbitration will be experienced in personal injury cases and the best approach is to tell him or her that you think your claim is worth somewhere towards the top end of the arbitration scale, i.e. £1,000 - £1,500.

### Damaged Property

The aim of the civil law is to restore the Claimant, by way of financial compensation, to the position that he or she would have been in had the damage not occurred.

This means that if, say, a coat which you had paid £100 for a year ago was badly torn as a result of a fall, you would not get £100 compensation in respect of that item. The quantum would be the sum appropriate to recompense you for the reduced value of a £100 coat which was a year old.

Proving how much you have lost because of damaged property can be difficult unless you have kept the original receipt or you can find a similar item for sale online and can print that evidence and produce it to the Judge.

### Other Expenses

If you have other expenses such as car hire, motor insurance excess, medical expenses etc. then you are entitled to reimbursement of these in addition to your claim for injuries.

One such additional expense sometimes overlooked is loss of the use of your car when it is being repaired following a road traffic accident.

You can claim £50 to £75 a week whilst your car is off the road being repaired. If you decide to claim for car hire instead, you cannot claim that and loss of use of your own car in respect of the same period.

If you are away from work you may suffer a loss of overtime earnings, in which case you can substantiate this part of your claim by obtaining a letter from your pay office stating the net sum lost.

For care and assistance you can claim £10 per hour for help required with normal day to day tasks you would usually do yourself, i.e. dressing and washing. This proves difficult to claim as it may be agreed that the help you required from your partner or another family member has not gone “beyond the call of duty” in their capacity as a partner or family member.

Interest at limited rates may also be payable and should be claimed as a separate item. Claim 2% per annum on the injuries award, and 6% on the financial losses. The court will only allow the 2% rate from when you issue proceedings and the 6% figure can be reduced by the court.

**PROCEDURE**

**Before Action**

Before issuing proceedings, you must write a letter to your opponent (called the Letter of Claim), describing the injuries and/or damage suffered and the circumstances in which the accident occurred. This will give your opponent an opportunity to investigate your claim and take a decision on liability.

The letter must give full details of (a) how you say that the accident occurred (b) why you allege that the Defendant was legally to blame (c) what injuries you suffered (d) what other expenses or losses you incurred to date (more losses may be added later).

More often than not, you will be dealing with your opponent’s insurers. Insurers, of course, are not motivated to respond promptly to your claim, not least because you might go away! If the insurer will not negotiate or if you think that any offer is woefully inadequate, you may find that by issuing proceedings you encourage them to try to settle your claim more quickly.

The insurers must investigate the claim and, within 3 months, agree to settle the claim or give their reasons for any dispute on liability.

## Settling Your Claim

A settlement can be reached before you issue proceedings or after proceedings have been issued right up to the time of the hearing.

Any correspondence about a settlement should always be headed Without Prejudice.

Think carefully before rejecting an offer, even the first offer, but it is usually worth trying to negotiate a higher sum. Insurers are skilled and experienced negotiators and it is unlikely that they will initially offer as much as they are ultimately prepared to pay. When making a counter-offer to an offer which is within your range of acceptability, pitch it about 25% higher than the offer.

If you believe your case is worth more than you are being offered then ask for case law to back up their valuation. This could help persuade them to increase their offer as they may have given a low offer so they have room to negotiate.

Ensure that your opponent agrees to reimburse you with any money which you have had to pay out to run the claim, such as fees for medical reports and court fees. These reimbursements are in addition to the £1,000 limit on damages so make sure you keep a copy of invoices and receipts.

## Issuing Proceedings

In order to issue proceedings you need to obtain from the County Court a form called the Claim Form. There are various forms depending on the type of case. The court staff will advise you which is the correct form to use. You can find the address of your local County Court in the telephone directory or online.

Before issuing proceedings, ask yourself whether the Defendant is traceable and, if so, whether he or she either has the personal means to pay you or is insured. There is just no point in suing a Defendant who has disappeared without trace or who cannot afford to pay you.

In road traffic accidents where the driver is uninsured or where the accident was caused by a driver who has never been traced, a claim should be made to the Motor Insurers Bureau (MIB) and their procedures followed to the letter. You should write to the MIB at 152 Silbury Boulevard, Central Milton Keynes, MK9 1NB. To assist you in deciding whether to make a claim or not, a flowchart is provided at Annex 1 to these notes. It is vital to note that notice of the issue of the court case must be given to the MIB within 7 days of the date of issue,

copying to them the Claim Form stamped by the court. There are other formalities involved in MIB claims, and it is vital to get and study the MIB Agreements which can be found online or by requesting the information directly from the MIB.

If you decide to go ahead, it is important to remember that proceedings must be issued within three years from the date of the accident. If you do not issue proceedings within that time, your claim will be statute barred and wholly unenforceable.

When you have obtained the appropriate Claim Form, fill in the basic details, attach a statement of why you believe the Defendant is to blame and list any out-of-pocket expenses which you are claiming. You do not have to specify on this form what sum you are claiming for damages – you just state that you are claiming damages for your injuries.

In personal injury claims you must obtain a written medical report in order to start proceedings. This should have been obtained well before court proceedings are issued.

You can obtain a medical report from your General Practitioner or the doctor who treated you at the hospital. The doctor will normally require a letter requesting a report and will charge you a fee for providing it.

The court will also charge a fee, known as an issue fee.

Please see Annex 2 for details.

If asked to do so, the court will serve the papers on the Defendant for you and will then send you a form showing the date of service of proceedings. The papers have to be physically served on the Defendant. While they can be served by post, proof of posting will not be taken as proof of receipt by the Defendant.

If the Defendant does not put in a defence within the time allowed, you should write to the court asking that judgment be entered in your favour. Where a defence is entered, the court will send you a document called a Directions Questionnaire. You must complete this in full and return it to the court by the deadline given by the court. The court will then allocate your case to the Small Claims Track, and send you written instructions called Directions which you must follow.

The other side may be permitted by the court to obtain a medical report on you from an independent medical practitioner. You can claim all reasonable expenses involved in attending for this examination. If the defence decides not to rely on the medical report, you are not entitled to see it.

Each side is required to disclose relevant documents to the other. In your own case this will include documents relating to the value of your claim, any photographs which you have taken and any other written evidence showing, for example, that there had been previous complaints about the defect.

One document which will be very useful to obtain after a road traffic accident is the Road Traffic Collision Report. Normally, the court will accept the report of the investigating police officer without that officer having to attend the hearing. Other witnesses, even though they have made statements, must be called to give oral evidence at the arbitration hearing. You can ask the court to issue a witness summons to ensure that attendance of any witnesses at the hearing.

**Counter Claims**

You may find that, as a result of your issuing proceedings, particularly in a road traffic accident case, the Defendant enters a counter claim against you. If this happens, notify your insurers immediately and they should take over the conduct of your case.

If you do not do this, your insurers may refuse to cover you.

**THE HEARING**

**Sequence of Events**

As the Claimant, you present your case first. The District Judge will ask you to say what happened. This is your evidence in chief and you should endeavour to introduce as much of your evidence as you can at this stage. When you have given your evidence, you may be cross examined by the Defendant's representative. You then call your witnesses to say what happened and after you have examined each one, he or she may be cross examined by the other side. After your witnesses have been cross examined, the District Judge may ask you if you wish to re-examine, i.e. put further questions to correct any misleading impressions caused by the cross examination.

When you and all your witnesses have given their evidence, that concludes your case. Remember, by this stage you must have introduced all the material acts, documents and exhibits on which you are relying in either your own evidence or that of your witnesses. It is too late to introduce them once your case is concluded.

Then it is the turn of the Defendant. The defence witness each gives his or her evidence in chief, examined by the Defendant's representative, and then you have the opportunity to cross examine them. The Defendant's representative then sums up for the defence, trying to show why, on the evidence, the Defendant is not to blame.

You sum up last so you have the final word. Where there has been a conflict of evidence, try to show why your evidence and that of your witnesses is to be preferred to the evidence of the defence. Your most important objective of course is to show why, on the evidence, the defendant is to blame for the injuries or damage you have suffered.

As the arbitration procedure is not run strictly according to the rules of Court, you may find that some District Judges adopt a different procedure and the hearing becomes more of a discussion than a court hearing.

**Conduct at the Hearing**

Refer to the District Judge as Sir or Madam.

Do not raise your voice, thump the table, lose your temper or tell the District Judge that he or she has made the wrong decision – that would be contempt of court and could land you in prison.

When examining your own witnesses, ask open rather than closed or "leading" questions. Much more weight is given to evidence adduced as a result of open questions, e.g:

*You:* *What happened next?*

*Witness:* *The Defendant drove round the bend at great speed.*

rather than:

*You:* *Did the Defendant then drive round the bend at great speed?*

*Witness:* *Yes.*

When cross examining, on the other hand, you may well have to resort to closed questions to elicit the truth from the Defendant or a defence witness.

What will decide the case in your favour is the quality of your evidence establishing the Defendant's liability. Your case should, therefore, be well prepared and presented in a calm and measured manner avoiding exaggerations and amateur dramatics.

**CHECKLIST**

A checklist of actions to be taken when presenting a small claim is provided at Annex 3.

The best of luck to you!

**ANNEX 1**

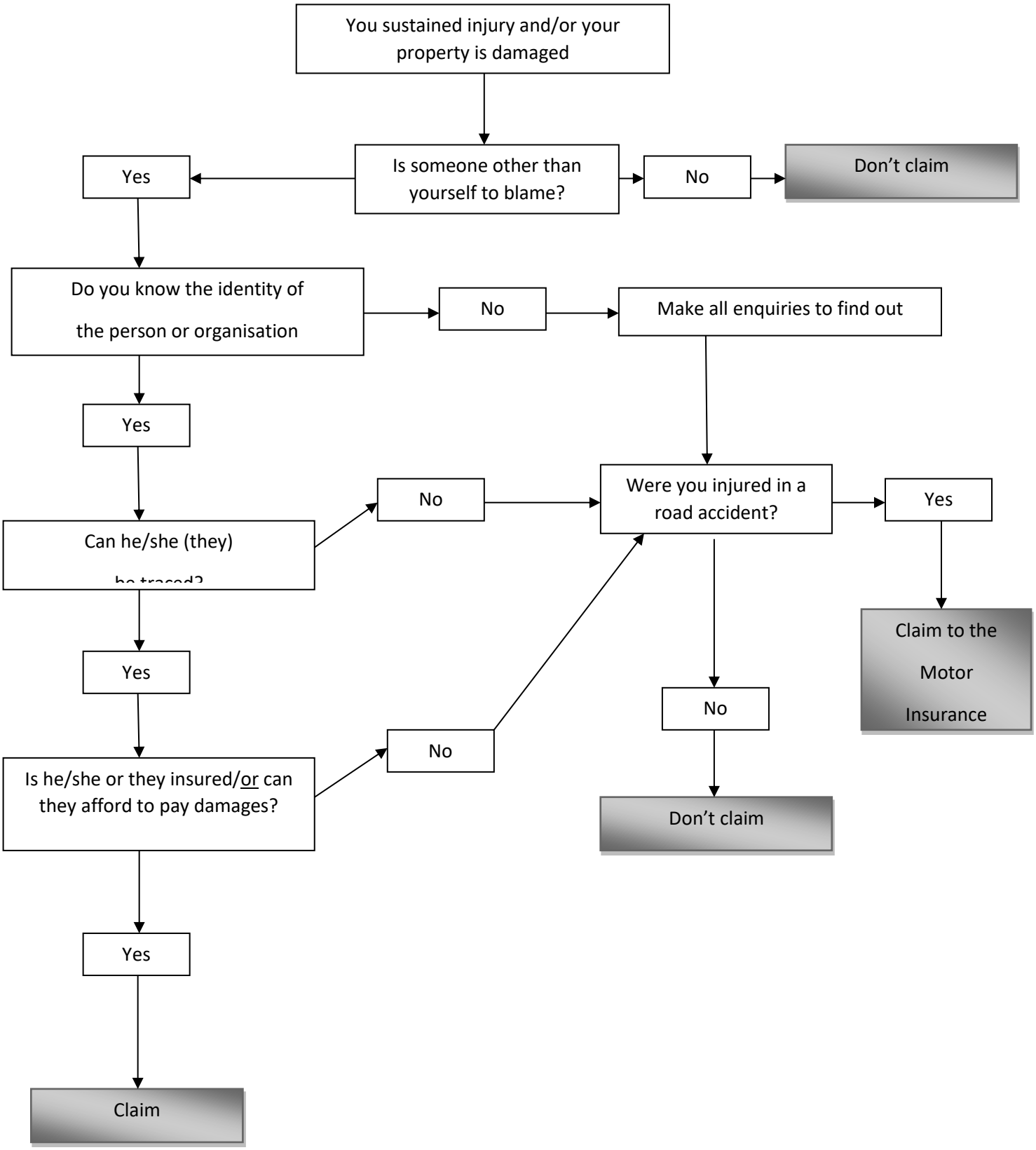
## COURT FEES

You will have to pay an issue fee to the County Court in order to start proceedings.

The issue fees currently in force are as follows:

| **Amount of Claim** | **Issue Fee** |
|---|---|
| *up to £300* | *£35* |
| *£300 - £500* | *£50* |
| *£500 - £1,000* | *£70* |
| *£1,000 - £1,500* | *£80* |
| *£1,500 - £3,000* | *£115* |

## ANNEX 2


You sustained injury and/or your property is damaged
Is someone other than yourself to blame?
Yes
No
Don't claim
Do you know the identity of the person or organisation
No
Make all enquiries to find out
Yes
Were you injured in a road accident?
No
Yes
Can he/she (they) be traced?
Claim to the Motor Insurance
Yes
No
No
Is he/she or they insured/or can they afford to pay damages?
Don't claim
Yes
Claim

## ANNEX 3

**IF YOU DECIDE TO CLAIM**

**CHECKLIST**

1. PROTECT THE EVIDENCE.

2. SEND LETTER OF CLAIM TO THE OTHER SIDE:

   - DESCRIBE INJURY/DAMAGE
   - EXPLAIN WHY OTHER SIDE IS TO BLAME
   - CLAIM COMPENSATION
   - INVITE THEIR PROPOSALS

3. OBTAIN MEDICAL REPORT AND/OR ESTIMATE FOR REPLACEMENT/REPAIR.

4. NEGOTIATE.

5. IF OTHER SIDE REFUSES TO NEGOTIATE OR MAKES INADEQUATE OFFER, ISSUE PROCEEDINGS:

   - OBTAIN APPROPRIATE CLAIM FORM FROM COUNTY COURT
   - FILL IN BASIC DETAILS
   - STATE WHY DEFENDANT IS LIABLE
   - LIST OUT OF POCKET EXPENSES
   - CLAIM DAMAGES (DON'T SAY HOW MUCH)

6. IF DEFENDANT DOES NOT PUT IN A DEFENCE, IN TIME ALLOWED, WRITE TO COURT ON FORM ASKING FOR JUDGMENT TO BE ENTERED IN YOUR FAVOUR.

7. IF DEFENDANT DOES PUT IN A DEFENCE, COMPLETE AND RETURN DIRECTIONS QUESTIONNAIRE AND FOLLOW THE WRITTEN DIRECTION FROM THE COURT.

8. DISCLOSE RELEVANT DOCUMENTS TO THE OTHER SIDE. ASK OTHER SIDE FOR THEIR RELEVANT DOCUMENTS. ASK THE COURT FOR AN ORDER IF THEY WILL NOT SUPPLY WHAT YOU WANT.

9. SUBMIT TO MEDICAL EXAMINATION IF SO REQUIRED BY THE OTHER SIDE AND IF ORDERED BY THE COURT.

10. MAKE SURE THAT YOUR WITNESSES KNOW THE DATE OF HEARING AND WILL ATTEND. IF IN ANY DOUBT, OBTAIN A WITNESS SUMMONS FROM THE COURT.

11. PREPARE CAREFULLY FOR THE HEARING, REMEMBERING THAT YOUR MAIN OBJECTIVE IS TO PROVE THAT THE DEFENDANT IS TO BLAME.