

Going to Court



Leaflet 1:

Are there alternatives?



"I sprained my ankle and got badly bruised when I slipped over on a wet floor in my local supermarket recently. I fell heavily, knocked into some shelves and a stack of tins fell on top of me. I was badly shaken, ached all over and had to take a week off work to recover."

"My roof is leaking. I have told my landlord about the problem but she has done nothing. My bedroom ceiling has large damp patches on it and I am worried it may collapse if the leak is not mended soon. I think she is hoping that I will give up and just move somewhere else."

Nowadays, it's possible to deal with many legal problems without going to court. And the courts are encouraging people to think about these alternatives. However there are times when going to court is likely to be the best or only option. If, for example, you are in danger of losing your home, your children, your job or being deported you may need an urgent solution; one that only a court can provide. In such cases, don't delay. Get legal advice.

Courts are not usually suitable places to solve problems caused by a communication problem or a misunderstanding. In these situations, talking to each other to find a solution, one you can both live with can sometimes help make it possible for you to go on having some kind of relationship in the future. This can be helpful if your dispute is with a neighbour, your landlord, your ex-partner or your child's school.

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RCJ Advice Bureau

Helping you find your way through court

What do you want to achieve?

You need to decide the result you want before choosing how to deal with your legal problem.

Do you want:

- an apology;
- an explanation for what happened to you;
- a promise that it won't happen to anyone else;
- a mistake corrected;
- a promise that a person or an organisation won't do something;
- a change in the way a person or an organisation behaves;
- something you own repaired or replaced;
- compensation;
- an order that something be done or stopped from happening?



Are your expectations realistic?

It may not be possible to solve your problem in the way you most want. For example, you may want your landlord to move you into a new home rather than repair your roof properly and redecorate your bedroom. But if the law doesn't say that your landlord must solve the problem in this way then it won't be possible to get this result unless they agree to it voluntarily.

You may think you should get a large amount of compensation for what has happened to you. But this may be unrealistic. Any possible award may be considerably lower than what you were hoping for and may involve you paying unexpected legal costs.

Also, even if you win your case, the other side might not pay. It may be they can't or they just won't. Either way, you will have to spend more to take 'enforcement action'. Enforcement action is what the law calls the legal steps you can take to get the money the court awards you paid. You need to find out what you can realistically expect to achieve before you decide how to solve your problem. Get advice on this. See **Where to go for further help** for details.



How do you want to solve your problem?



Here are some things to think about when deciding how to go about solving your problem:

- Do you feel able to meet your opponent face to face? Would you prefer doing something that involves no personal contact with them?
- Do you feel you need advice or support or representation to help you? You may feel able to take on the work involved with some methods of resolving your dispute but want help with others.
- Will you need help communicating, for example, an interpreter, signer or translator?
- How much time and travelling will be involved?
- Will the process you are thinking of choosing mean that you can't take legal action later if you are not happy with the outcome? If so, are you prepared to accept this?
- How much will the process cost?

What is your opponent's attitude?



Your opponent is the company, organisation, council or person you have a problem with. People who work in courts (lawyers, judges and court staff) often refer to an opponent as 'the other side'. It is important you think about your opponent's attitude to solving the problem because if they are not willing to negotiate or go along to a mediation session then you cannot make them. So if you were hoping to sort out your problem this way and your opponent won't play ball, then you may have no choice but to try another method. However sometimes people change their mind once they realise what they could lose if they don't reach an agreement with you. One advantage of complaining to an ombudsman or going to court is

that these processes can be used even if the other side isn't very cooperative.

Equally, sometimes the other side (your opponent) may be just a bit too keen on using an alternative method of resolving the dispute. Is this a delaying tactic? Are they trying to avoid their responsibilities for a bit longer? If you are not sure, get advice. See **Where to go for further help** for details.

There are various ways in which you may be able to solve your problem without going to court. Here are some of the options....

Negotiation

You may be able to solve your problem informally by talking directly to the person or organisation that seems to have caused the problem. If you explain the problem and make reasonable suggestions for how it can be sorted out you may be able to agree a way forward, for example,

with your neighbour or your builder. If you don't feel confident enough to do this on your own, contact your local CAB, Law Centre or other independent advice centre for help. See **Where to go for further help** for details.

Complaints procedures

Most large organisations and businesses, for example, councils, banks, solicitors, police, gas and electricity suppliers, schools, Universities, Royal Mail, and the NHS have a process for handling complaints. Making a complaint gives them a chance to look into your problem and try and sort things out with you. You will probably find details explaining how you can make a complaint on their website.

You can make a complaint over the phone but it is usually better to complain in writing so you have a record of it. Don't delay; if you leave it too long, you may have missed the deadline for complaining. To find out about time limits and for help drafting a complaint letter contact your local CAB, Law Centre or other independent advice centre. See **Where to go for further help** for details.



- Before you take any action, be clear in your own mind what you think the problem is and how you would like things put right.
- Stay calm. No matter how upset you are, try to stay polite. That way, you will get your points across much more clearly and effectively. The person on the other end of the phone or who gets your letter or email almost certainly wants to help you if they can. But they are only human. If you shout at them or are rude, they may not put as much effort into helping you as they would do otherwise. How helpful would you be to someone who was rude to you?
- If you complain by phone, make sure you keep a note of the date and time when you called and the name of the person you spoke to.
- If you write, put 'Complaint' clearly at the top of your letter or email. Keep your letter short and simple. Say what you are not happy with and what you want done to resolve the problem.

Alternative Dispute Resolution ('ADR')

If initial negotiation fails or your complaint doesn't seem to be getting anywhere you may want to consider alternative dispute resolution as a way of taking things further. ADR refers to methods of resolving disputes without going through the process offered by the courts. It includes methods such as mediation, conciliation, arbitration and ombudsmen schemes. These terms are explained in the **Jargon buster**. The courts encourage people to try ADR. In the future it is possible you may be required to try it. Many people end up wishing they had tried another approach before going to court.

ADR schemes can have advantages over going to court. You may resolve your dispute more quickly, more cheaply and find the experience less stressful than going to court. But this is not always the case. For more information about this see **Why use ADR? Pros and cons** at: <http://asauk.org.uk/alternative-dispute-resolution/#public>.



Paula's story

I slipped and fell on a puddle of oily liquid leaking from one of the store cupboards at the back of the busy restaurant kitchen where I work. I fell heavily, put my hand out to stop my fall and broke my right wrist. I also injured my knee. I had to have surgery on my wrist and physiotherapy for my knee. My knee is still painful and my mobility is not as good as it was. My employer was not prepared to settle my claim and so in the end I had to start court proceedings. I got medical evidence to support my claim and legal advice about what my claim was worth. My employer offered me much less. I was extremely nervous about having to go to court; I really didn't want to do that. So when I heard about the possibility of mediation I agreed to go. Fortunately my employer did too. I was worried it would be difficult seeing him again after all this time but I didn't have to. He was in a different room from me. It took about two hours to sort out. In the end I accepted an increased offer from him. It was not quite as much as I had hoped for but it wasn't far off what I'd been told my claim was worth. I was really pleased I'd gone for mediation; for me it was quicker and less stressful than going to court.

Sometimes, ADR can lead to a solution that satisfies both sides and has a longer lasting impact on your life than anything a court is likely to achieve, for example, improved communication between you and a member of your family or a neighbour.

Here are some problems that you may be able to resolve using ADR before or instead of going to court.

Problems at **work**

Whether you are an employer or an employee, you can contact **ACAS (Advisory, Conciliation and Arbitration Service)** for free, confidential and impartial advice about problems such as unfair dismissal, equal pay, redundancy, the terms and conditions of your job, bullying, harassment, the breakdown of your relationship with a work colleague or any other kind of disagreement or dispute in the workplace.

ACAS also offers mediation, conciliation and arbitration services. You can find out more about ACAS, their charges (if any) and how to contact them at www.acas.org.uk.

Problems with **discrimination**

Anyone who feels they have been treated unfairly in connection with their employment, education or use of services (such as hotels, shops, banks, cinemas, bars, transport and travel, electricians, dentists and services provided by councils) because of disability; race; religion or belief; sexual orientation; gender (including gender reassignment); or age may be able to get advice from the Equality Advisory Support Service about how to resolve their problem informally.

You can find out more about this service, their charges (if any) and how to contact them at www.equalityadvisoryservice.com.

Problems with **neighbours**

Your problem may be to do with noisy neighbours, pets, parking problems, boundary disputes, rubbish, hedges that are too high, and trees that block out your light or anti-social behaviour. You can try and sort out these kinds of problems by using community mediation. Search the internet or ask your local council for details of your nearest community mediation service. Charges vary but sometimes the service is free.

You can also ask your council to help solve your problem. If you are not satisfied with their response, then you may be able to complain to the Local Government Ombudsman www.lgo.org.uk in England or the Public Services Ombudsman for Wales www.ombudsman-wales.org.uk.

Problems with **tenancy deposits**

Tenancy deposits paid after April 6th 2007 have to be paid into one of three, government authorised deposit protection schemes when the money is first paid to the landlord. These are:

- **The Deposit Protection Service**
www.depositprotection.com
- **My deposits**
www.mydeposits.co.uk
- **The Tenancy Deposit Scheme**
www.thedisputeservice.co.uk

The landlord chooses which service to use. The schemes try to resolve

disputes about deposits quickly and without the need for court action. The aim is to make sure that tenants who have paid a deposit to a landlord or letting agent actually get it back at the end of the tenancy if they are entitled to it. If you agree to use one of these tenancy deposit schemes to resolve your dispute, you cannot appeal the decision of the adjudicator (unless you challenge it through the courts) and you cannot take your claim to court later.

Check the relevant website for details, information about their charges (if any) and how to contact them.

If your landlord has not paid your deposit into one of these schemes, then you may have to go to court to resolve your problem.

For more information about tenancy deposit protection see: www.gov.uk/tenancy-deposit-protection/overview.

Problems with housing

You may have a problem to do with your landlord, perhaps because of how they are dealing with your application for a transfer or with charges they are making. If you have complained to your landlord but are not satisfied with their response then you may be able to complain to an Ombudsman.

In England, the Housing Ombudsman Service looks at complaints about registered social landlords, for example housing associations, and other landlords, managers, and agents. For more information see www.housing-ombudsman.org.uk.

The Public Services Ombudsman for Wales deals with complaints about any social landlord in Wales including housing associations. For more

information see www.ombudsman-wales.org.uk.

For more information about how to solve a housing problem without going to court if you are renting privately see: www.gov.uk/private-renting/settling-disputes.

Problems with planning

Local authorities have their own complaint and appeal procedures that you can use if you are unhappy about a planning decision. If you are not satisfied with their response, then you can make a complaint to the Local Government Ombudsman www.lgo.org.uk for local authorities in England or the Public Services Ombudsman for Wales www.ombudsman-wales.org.uk.

Problems with education and training

If your child has special educational needs and you and your child's school or the local council disagree about how to meet those needs, ADR is available to help you find a solution. For more information, see <https://www.gov.uk/special-educational-needs-disability-tribunal/before-you-appeal> if you live in England or www.snapcymru.org/disagreement_resolution if you live in Wales.

In England, if you have a problem relating to school admissions or exclusions, school transport, home tuition or some aspects of special educational needs, the Local Government Ombudsman may be able to help you. See www.lgo.org.uk/schools.

If you have a problem with a further education college or an apprenticeship, see www.gov.uk/complainfurthereducationapprenticeship.

The Office of the Independent Adjudicator deals with individual complaints against universities and colleges in England and Wales. For more information see www.oiahe.org.uk.

Problems with benefits

If you think a decision about your benefits is wrong, then you need advice about an appeal and quickly because time limits apply. If you want to complain about how a decision was made, for example, it took too long or you were treated unfairly in comparison with the way others were treated, then in the first place you can complain to whichever government agency made the decision. If you are not satisfied with their response, you may be able to take your complaint further.

The Independent Case Examiner <https://www.gov.uk/government/organisations/independent-case-examiner> deals with complaints about government agencies such as Child Maintenance Options, the Pensions Service and Job Centre Plus.

The Adjudicator's Office www.adjudicatorsoffice.gov.uk deals with complaints about agencies such as HM Revenue and Customs. So if, for example, you are unhappy with how HM Revenue and Customs dealt with your complaint about their handling of your claim for child benefit or tax credits, you can complain to The Adjudicator's Office.

Problems with goods and services

For information about consumer rights and how to resolve a dispute when you buy goods or services, see www.gov.uk/consumer-protection-rights.

There are some specific schemes to help you resolve disputes about goods and services. Many of them are ombudsman schemes. Ombudsmen will not normally consider a complaint until the organisation or business concerned has had a reasonable chance to sort it out first. You cannot go to court at the same time as complaining to an Ombudsman. All ombudsman schemes in the UK provide a free service to consumers. Complaints must be made within a reasonable time and often there is a fixed time limit within which to complain.

The Health Service Ombudsman www.ombudsman.org.uk investigates complaints about the National Health Service (NHS) in England including NHS hospitals, GPs, dentists, opticians, pharmacists and other providers (including private health care) where the service is paid for by the NHS. Complaints about NHS provision in Wales are dealt with by the Public Services Ombudsman for Wales www.ombudsman-wales.org.uk.

The Financial Ombudsman Service deals with complaints about services provided by organisations such as banks, insurers and mortgage companies. For more information see www.financial-ombudsman.org.uk.

The Legal Ombudsman helps resolve complaints about lawyers. For more information see www.legalombudsman.org.uk.

The Pensions Ombudsman investigates complaints about how pension schemes are run. For more information see www.pensions-ombudsman.org.uk.

The Property Ombudsman helps to resolve disputes between members of the public and estate agents. For more information see www.tpos.co.uk.

Ombudsman Services: Property helps resolve complaints from consumers about chartered surveying firms, surveyors, estate agents, residential managing agents, letting agents and other property professionals. For more information see www.ombudsman-services.org/property.html.

Ombudsman Services: Communications resolves complaints about companies which provide communications services, including phone and broadband to the public. For more information see www.ombudsman-services.org/communications.html.

The Removals Industry Ombudsman Scheme resolves complaints about removal or storage companies that are members of the National Guild of Removers and Storers. For more information see www.removalsombudsman.co.uk.

The following are not ombudsman schemes:

The Communications and Internet Services Adjudication Scheme can help settle disputes with communications companies, such as mobile and home phone companies or internet service providers, which are scheme members. For further information see www.cisas.org.uk.

ABTA deals with travel problems. You can find out more about ABTA, their charges and how to contact them at <http://abta.com/go-travel/travel-clinic>.

Problems with medical treatment

Action against Medical Accidents ('AvMA') is a charity working for better patient safety and justice when things go wrong in healthcare. It can provide free and confidential advice following a medical treatment which goes wrong or causes you injury. It can also advise you about the NHS complaints procedure, how to complain about private healthcare and ways of settling disputes without going to court. You can find out more about Action against Medical Accidents and how to contact them at www.avma.org.uk.

See also the Health Services Ombudsman referred to on **page 8**.

Problems with the Police

Individual police forces deal with complaints involving police officers and staff within their force. If you are not satisfied with the outcome of your complaint you may be able to appeal to the Independent Police Complaints Commission (IPCC). Serious cases are referred to the IPCC in any event.

The IPCC oversees the police complaints system and is also responsible for dealing with serious complaints about staff at the National Crime Agency, Her Majesty's Revenue and Customs (HMRC), Police and Crime Commissioners and the UK Border Agency (UKBA). You can find out more about the IPCC and how to contact them at www.ipcc.gov.uk.

Top tips!

- ADR is not suitable for every problem. You may need an urgent solution; one that only a court can provide, for example, an injunction to prevent illegal eviction. If you are in danger of losing your home, your children, your job or being deported you may have no choice but to go to court.
- You need to know what you want and, if money is involved, how much your claim is worth, before you go down the ADR route. So don't delay, get advice.
- Reaching an agreement usually means being prepared to compromise.
- It may be worth accepting less or paying more to avoid the risk, uncertainty and expense of litigation – but always get advice on this.

Finding an ADR provider

- See **Finding and choosing a mediator** at <http://asauk.org.uk/alternative-dispute-resolution/#public>.
- You can find an ombudsman by searching www.ombudsmanassociation.org/find-an-ombudsman.php.
- A directory of civil and commercial mediation providers, accredited by the Civil Mediation Council, is available at www.civilmediation.justice.gov.uk.
- You can find a family mediator by searching www.familymediationcouncil.org.uk or <http://find-legal-advice.justice.gov.uk>.

Deciding to do nothing

Deciding to do nothing is different from not doing anything because you cannot decide what to do. If you look at the situation you are in and decide to take no action at all, as long as nothing bad is likely to happen as a result, this may

be the best outcome for you. It is a definite decision, that may also be a great relief. However, get advice before deciding to do nothing if your problem is urgent or has to do with threats to your home, livelihood, health or safety.

Going to court

You may be cross or upset and want to see the smile wiped off your opponent's face. Maybe your opponent cannot be persuaded to negotiate or refuses to try ADR. Either way, going to court ('litigation') can sometimes be:

- uncertain,
- unpredictable,
- expensive,
- surprisingly formal,
- risky,
- stressful,
- not a quick fix; it can take a long time.

It does rather depend on the kind of case you have and the type of court you use. For example, if you have a claim that can be dealt with in the small claims court then it may be less risky or stressful. You may be offered free mediation if your claim is contested and you are likely to get a quicker outcome than if, for example, you use an ombudsman.

You need to find out what the law says about your problem. Does it support your case?

Getting advice

Get advice about what the law says when you are unsure. Does it still support your case? If not, should you decide on a different option for solving your problem rather than going to court?

You must have a legal basis for taking action. Without this, you don't have a case; you may just have a problem you need to resolve in another way. Get advice if you are unsure. Even if you are reasonably confident that you understand what your legal position is, it can save you time and money in the long run to check.

So, don't sue unless you have to and remember it is never too late to compromise – for both parties to give up a little of what they want – if that way you can reach an agreement.

Top tip!

- Check whether going to court or using an alternative method of dispute resolution offers the best way of resolving your particular problem. Don't delay. Get legal advice.

Jargon buster

Adjudication – involves an independent person considering both sides of a disagreement and making a decision.

Alternative dispute resolution ('ADR') – a range of options for resolving disputes, often without going through the process offered by the courts.

Arbitration – is similar to adjudication except that it is a more formal process and requires you to accept the arbitrator's decision. You are unlikely to be able to challenge the decision if you don't agree with it.

Mediation – a way of helping you and your opponent try to find your own solution to the problem.

Conciliation – is another name for the same process as mediation.

Ombudsmen – investigate and resolve complaints about organisations and government bodies.

Where to go for further help

How to find a legal advisor

The Royal Courts of Justice Advice Bureau can help you if:

- you have a case in the County Court, High Court, Administrative Court or Court of Appeal in civil or family cases

and

- you are not already represented by a solicitor or barrister.

The Royal Courts of Justice Advice Bureau has qualified solicitors who can give you free, confidential legal advice including help with:

- Court procedure
- Applications to the court
- Referral to free representation
- Referral to a free mediation service
- Free advice from a costs draftsman about orders for costs against you.

The Royal Courts of Justice Advice Bureau is independent of the courts and can help wherever you live in England or Wales.

To book an appointment to see a solicitor please see www.rcjadvise.org.uk for latest appointment details.

You can also ask friends and family for a recommendation. To find a local solicitor who can help you, search here:

- find-legal-advice.justice.gov.uk
- www.lawsociety.org.uk/find-a-solicitor
- www.lawcentres.org.uk/i-am-looking-for-advice

Help finding court forms

Court staff may be able to explain court procedures and help you find a court form. They are not able to give you legal advice.

You can search for court forms here:

<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

(continued overleaf)

Where to go for further help – continued

Help when at court

The Personal Support Unit (PSU) supports people going through the court process without a lawyer. Volunteers offer a free and confidential service. PSU aims to help you manage your own case yourself. PSU does not give legal advice or act on your behalf, but can offer practical help such as going to your hearing with you and help completing and filing your forms.

For more information as well as the location and contact information for your nearest PSU, please visit www.thepsu.org or call **020 7947 7701/7703**.

Sources of information about the law and your rights

Advicenow www.advicenow.org.uk

Adviceguide from Citizens Advice www.adviceguide.org.uk

Feedback

Whether you have read one or all of the Going to court leaflets, we would love to hear from you. Please tell us what you think of them by completing our survey (www.surveymonkey.com/s/FGZ3G2B). We will use your feedback to improve the leaflets and make sure they are as helpful as possible. Thank you!

Photos:

Cover: Gail Lyle (Bolton CAB), Aaron Marsden (Bolton CAB) posing as customer. © Citizens Advice/ABCUL 2008.
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Disclaimer: The law is complicated. It is always best to get advice. This leaflet is not meant as a substitute for legal advice.

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RCJ Advice Bureau
Helping you find your way through court