



# The Small Claims Court

**The Small Claims Court is one of the consumer's greatest weapons against rogue traders. We examine how its process has changed in recent years, and what consumers need to be aware of going forward**

 **REPORT** by *Róisín Moloney*

At a glance

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- **Recent changes**
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The use of the small claims court provides an inexpensive, fast and easy way for consumers to resolve disputes without the expense of employing a solicitor. And its use is on the increase. In 2010 3,947 applications were made through the small claims procedure – up 12.5% from 2009. With good odds of a favourable outcome (approximately 50%) it offers encouragement to an unhappy consumer to proceed with their claim.

## Types of claims covered

A claim using the Small Claims Court

system cannot exceed the value of €2,000, a limit that the CAI believes too low. We feel this should be increased to a minimum of €3,000.

Consumer claims such as for faulty goods or bad workmanship are common. Also covered is minor damage to property and non-return of rent deposits for certain types of rental properties, i.e. holiday homes or apartments in which the landlord also resides. Excluded from the procedure are claims arising from a hire purchase agreement, a breach of a leasing agreement, or debts.

## Eligibility

Importantly you must have bought the goods or services from someone selling them in the course of business. Since January 2010 the small claims procedure has been extended to cover claims by one business against another business, once within the €2,000 threshold. However it does not apply to claims in relation to agreements to which the consumer Credit Act 1995 applies or to breaches of leasing agreements and importantly it does not cover debt or liquidates damages.

Recent EU Directives have led to the establishment of the European Small

Claims Procedure for cross-border cases. A cross-border case is one where at least one of the parties lives in a member state of the European Union (except Denmark) other than the member state of the court dealing with the claim. This service is provided through the District Court similar to the traditional small claims procedure. A consumer may commence a European small claim in the District Court area where the consumer is ordinarily resident or carries out any profession, business or occupation.

### Making a claim

The Small Claims Registrar, who is usually the District Court clerk, processes the claim. The Claimant (that is the consumer making the claim) should contact the District Court Office where the Respondent (the person or company the claim is made against) lives or carries on its business. Otherwise contact the District Court Office of the area where the contract was made, or in the case of damaged property, where the damage took place.

To make a claim an application form must be completed. This can be collected from your local District Court Office or downloaded online at [www.courts.ie](http://www.courts.ie), however no online application is available for a cross-border claim.

In order to complete an application you must have details of the person or company you are making the claim against. It is not enough to just have the name of the shop - you must find out the name of the shop owner. You can do this by making a Companies Search or a Business Name Search in the Companies Registration Office. You should set out the facts of your case clearly and simply and state the amount for which you are claiming. If you run into difficulty, the Registrar will be happy to help. The application form must be accompanied by a fee of €18 and lodged in the District Court.

### After the claim is made

A copy of the completed application form will be sent by the Registrar to the Respondent. At this point there are various choices available to the respondent.

Firstly they can admit a claim and in this case he/she has 3 options. (i) He may agree to pay the amount claimed immediately; (ii) He may consent to judgement and will pay within 28 days of the judgement being made in the small

claims court office; (iii) The respondent may also agree to pay in instalments with your consent. However the respondent must reply within 15 calendar days. If not it will mean the respondent is deemed to have admitted the claim.

Secondly the respondent can dispute the claim and has 15 calendar days to do so. In this case the Registrar will try to negotiate and settle the dispute. If no settlement can be reached, the matter is then set down for court hearing.

Thirdly, an option open to the Respondent is to counterclaim again within 15 calendar days. In this case the Registrar will send you a copy of the Notice of Dispute and will try to settle the matter.

The Small Claims Registrar may call both parties to his/her office for an informal and private meeting. He will ask

expenses are incurred you will have to cover those costs also.

### If the respondent doesn't pay?

If the matter is decided in your favour, the Respondent will be allowed approximately four weeks to pay the amount awarded by the court. If the respondent does not pay you can apply to the small claims registrar to have the order of the court sent to you for execution by the Sheriff. There will be a fee payable to the Sheriff which will be refunded to you if the Sheriff succeeds in executing the court order/decreed. The execution of the court order is then a matter for the Sheriff who will notify the claimant. It is important to note that the Sheriff will not always be successful in the execution of court orders; however there can be benefits to getting a judgement. It

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both parties to outline the facts and he may question both parties for clarity. If an agreement cannot be reached the registrar may there and then fix a date, time and location for a hearing of the claim before a judge of the District Court.

### Attending court

Once the date for the hearing has been set you must attend. The court environment is both formal and public and so you should familiarise yourself with the court practices before the hearing. Remember to bring with you all the documentary evidence supporting your claim. Evidence must be given under oath or affirmation and you can be cross-examined by the respondent or their legal representatives. The Small Claims Registrar may be present to assist you with the hearing but when your case is called it is the Court Registrar (who usually sits on a slightly raised platform below the judge facing the court) that will call you to the witness box to give evidence. You may engage a solicitor but this will be at your own cost even if you are successful with your claim. You may engage a witness for the hearing but if

can be the case that the respondent does not have the funds to pay at the present however circumstances change and the effects of obtaining a judgement is to give you the immediate opportunity to take the appropriate enforcement action to get your money. If you obtain a judgement you will have the right to take action to recover the debt for a further twelve years from the date of judgement.

### Taking the small claims route

Ultimately the decision to go to court is a personal decision but there is little satisfaction to be gained from winning a case if the respondent is unable to pay a judgement debt now, or for the foreseeable future. However the procedure allows you to make a small claim with a minimum of red tape and at little cost. For more information contact your local District Court Offices or go to [www.courts.ie](http://www.courts.ie)

### Useful website

**Courts Service Ireland**  
[www.courts.ie](http://www.courts.ie)