

# Small Claims - Big Help



REPORT by *Alex Tierney*

## Everything you need to know about the Small Claims Court.

**Claimant:** The person who is making the claim.

**Respondent:** The person/business against whom the claim is made.

**Registrar:** District Court Clerk responsible for administration and management of small claims cases  
Office: The Small Claims Office/District Court Office.

**Sheriff:** In Dublin and Cork it is the Sheriff who enforces orders; in every other district it is the County Registrar

**Office:** The Small Claims Office/District Court Office.

To those who do not make their living in the judicial world, the word court can suggest a complex and alien system where experienced practitioners flourish at the expense of the inexperienced. And expense is another key word, as are time, intimidation and stress, because often these are the hurdles one must negotiate in order to reach a legal resolution.

The question asked of any prize is this: is it worth the obstacles that precede it? For instance, is gaining redress for a faulty television or a poorly fitted kitchen worth the hassle of a court case? If you bought a defective phone and the provider won't offer you satisfaction, will taking the matter to court not cost more than the phone did in the first place? Won't prosperous companies simply engage teams of legal veterans to overwhelm you?

If these concerns were to keep consumers away from the courts system, the whole structure of consumer protection would lose a vital supporting pillar. Fortunately, there is the Small Claims Court,

which provides a staunch yet low-cost legal resort for those whose complaints have gone unheeded. Following a pilot phase of testing by the CAI, which received presidential recognition, the Small Claims Court was established in 1993 as a branch of the District Court. Since then it has proven to be a hugely useful mechanism for ensuring that consumer law is not merely a set of ideals that businesses can safely ignore, and that where consumers are entitled to redress, they will be able to attain it in a reasonable timeframe and without enormous difficulty. There is a €25 application fee, legal representation is not mandatory, and costs are not awarded, which means that a consumer does not have to bear the risk of massive legal fees. Furthermore, the decisions are final (in the absence of an appeal) and enforceable through the sheriff.

### Success Rate

With regard to the court's success rate, in 2013 it dealt with a total of 2,748 cases, out of which 698 were referred to court. (See Table 1). Of the 698, 306 decrees were granted to

the Claimants, while 82 cases were dismissed, meaning that the Judge had not found in the Claimant's favour. A further 310 were struck out or withdrawn; one reason for such is that the parties in question might have settled on the day of the hearing, a common occurrence.

It is important to note that the procedure is one of negotiation and that the Registrars will go to great lengths to negotiate a settlement between disputing parties; it is only when this has proven to be impossible that a court date will be recommended. So out of the total caseload of 2,748, 616 were settled by the Registrar, meaning the Claimant never had to attend court, and a further 180 decrees were granted to the Claimant by default because the Respondent had not engaged in the process. (See Table 2)

While it is an excellent system, we would advise you to ensure that your particular claim is eligible: in 2013 1,026 cases could not be dealt with as they were not covered by the Small Claims procedure. (Please see our guide below for eligibility criteria.)



**TABLE 1: CASES HEARD IN COURT**

	2012	2013
Decrees granted	345	306
Cases dismissed	73	82
Cases struck out/withdrawn	304	310
<b>Total</b>	<b>722</b>	<b>698</b>

**TABLE 2: CASES REVIEWED UNDER SMALL CLAIMS PROCEDURE**

	2012	2013
Decrees by default	213	180
Settled by registrar	740	616
Referred to court	722	698
Cases not covered	1,221	1,026
Cases not proceeded with	475	228
<b>Total</b>	<b>3,371</b>	<b>2,748</b>

Numbers are one thing; but what exactly does the process entail, and what can you expect if you decide to take out a claim? As the Consumers' Association of Ireland was involved in the establishment of the court and has long championed the valuable work it carries out, we firmly believe that it would benefit consumers in need of its services if we were to strip away any tarnished images that might be derived from the word court and show, instead, the true, cost-friendly, consumer-friendly, fair and diligent operation from top to bottom. As part of our effort to do this, we attended a full sitting of the Dublin Small Claims Court and observed first-hand how the cases were handled.

## PART 1: A DAY IN THE SMALL CLAIMS COURT

The following is an abridged account of our day in court: a variety of cases is presented to give you an idea of how the court operates and the different judgements that can be made.

### Entering the Court

The court session began at 10.30 in the morning, which is customary for all Small Claims Courts throughout Ireland. A list on the door provided the cases and the order in which they would be called. All Claimants and Respondents were required to be present at the opening of the session.

Prior to the Judge's arrival, the Small Claims Registrar made several announcements that covered the rules of the court (no eating, drinking, reading the newspaper) and read out a roll-call of the cases, asking each party to stand and acknowledge their presence. Following the roll-call, the Judge entered. As a first order of business, he went quickly through the listed cases to ascertain whether any of the parties had settled or not. In a number of cases, people rose to inform him that they had settled the matter among themselves, and where the Judge enquired after details of the settlement, such as the sum of money or agreed time-frame for the payment, these were given. Once he was satisfied that both Claimant and Respondent were happy with the situation, the Judge adjourned the matter for mention, meaning he would mention it at the next session and if the settlement had unravelled by then, either party was free to appear before him and renew the complaint. If the settlement did not unravel, neither party need appear; it was, the Judge said, merely a safety net. After elucidating the matter, he allowed the settled parties to depart.

### Applications for Subservice

The first cases heard by the Judge were applications for substitution of service. When the Notice of Claim is originally sent to the Respondent, informing him/her that the Claimant is taking out a case, it is sent by registered post. If the registered letter comes back to the Small Claims Office, it is taken that the Respondent either does not reside/trade at the given address or has evaded taking possession of the letter. At that point the Claimant will be asked to come into court to apply for the Notice to be sent either to the same address by ordinary post or to a new address.

Applicants were requested to enter the witness box and provide information to the Judge that would satisfy him as to the appropriate address. Some applicants sought to prove that the Respondent continued to reside/trade at the address originally given, and where they were successful in this the Judge made an order for the Notice of Claim to be sent to the same address but by ordinary post. Where a new address was provided, the Judge looked for supporting evidence and, upon receiving it, made an order for the claim to be sent by registered post. In one case where no satisfactory address was given, the Judge informed the Claimant that he could not make an order against a Respondent who was not aware of these proceedings and advised her to contact the Companies Registration Office where she would hopefully find the Respondent's business address listed. He then adjourned the matter to give her time to make such enquiries.

### Cases where the Respondent was not present

A short recess was called, giving all parties another opportunity to settle. Following that, the Judge heard a number of cases where the Respondent did not appear.

In the first case a consumer claimed that the Respondent had caused a certain amount of damage to her car while it was parked outside her house. The matter presented the Judge with an unusual difficulty in that the damage had occurred five and a half years ago. While the Statute of Limitations is six years, and thus the Claimant was legally entitled to pursue the claim, the large time lapse created a number of complications, the primary one being that nobody could say that the Respondent's failure to appear before the court was intentional. It was stated that the case would have to be adjourned until the Judge was satisfied that the Respondent was aware of the proceedings.

In the next case the Judge informed the Claimant in question that, in the Respondent's absence, he would take it upon himself to ensure that the interests of both sides were properly represented and all salient evidence obtained and carefully reviewed. The matter concerned a mobile phone that had ceased operating satisfactorily after a short period of time. It was the Claimant's belief that the defect was inherent in the phone's design and that she was entitled to a replacement, but the provider had refused this on the basis that she had dropped the phone and it had sustained a small crack. While agreeing that the crack in the phone was "marginal", the Judge informed the Claimant that he would need to see a report from an independent expert stating whether or not such minor damage could cause the phone to malfunction in the way it had. He then adjourned the matter to give the Claimant an opportunity to obtain the report.

### Disputed cases

In cases where both Claimant and Respondent were present, the Judge called them forward to sit together at the front bench; after being sworn in by the Small Claims Registrar, they were invited to give their evidence from the bench rather than take turns in the witness box.

The first disputed case concerned wedding photography; a consumer was claiming against the photographer for poor service and an inferior product, namely the wedding photographs. When called upon to give the particulars of the claim, the Claimant pointed to a lack of quality in the pictures, as well as the absence of certain key photos you would normally expect from a wedding day selection. Following the Claimant's evidence, the Judge heard from the Respondent, who broadly denied all of the allegations. It was then understood that the Judge himself would need to review the photographs in order to make a judgement. When asked if there was a wedding album, the Claimant produced a disk and informed the Judge that a hard copy did not yet exist. As there was no apparatus in the courtroom that day for accessing the disk's material, the matter was adjourned and the disk left with the court for future examination.

The final case concerned a claim taken against a car dealership for a substantial repair bill suffered by the Claimant when a timing belt broke while he was driving abroad, resulting in considerable damage to his engine. The dealership had attached a number of third parties to the claim, and when the Claimant and Respondents came forward to take their seats, the whole of the front bench was taken up. While sympathising with the Claimant for the damage and costly repairs, the dealership and the automotive repair shop maintained that it was the manufacturer of the timing belt who had the ultimate liability. The agents for the manufacturer were present, and they contested the issue until the Judge signalled that he had made his decision. Consumer law, he said, compelled him to follow the chain of liability back to its final point, which, in this case, was the Irish agents for the timing belt manufacturer. Accordingly, he ordered that the agents must pay the Claimant the sum of €2,000, the maximum amount allowed within the Small Claims Court. Thus ended the day's proceedings.

### Summing up

The process we observed was an efficient one where all concerned were treated respectfully and accorded all necessary help in the presentation of their claims. The Judge was courteous, knowledgeable and fair, as was the Registrar. Where delays or adjournments arose, they were most often caused by an incorrect address being given or the absence of a key piece of evidence, such as a report from an independent expert. Anyone considering taking out a claim should keep this in mind.

Of course, whether you are ultimately awarded your decree or not depends on the circumstances of the case, but at the very least you can be confident that your claim will be dealt with in a professional, helpful and understanding manner.

## PART 2: THE INFORMATION

For those considering taking out a claim, the following is a guide to the Small Claims procedure, detailing what is required from the Claimant and explaining how the process will unfold.

### Am I eligible?

You can claim against a person/company for goods or services where you have purchased them for private use and they have sold them in the capacity of a business. If you are a business you can claim against another business for goods/services purchased for business use. Claims are allowed for specific types of rental arrangements, including holiday homes and where the landlord resides in the rented property. Damage to private property is also covered, provided you witnessed the occurrence of the damage.

Hire-purchase agreements, lease agreements, debt, consequential damage, compensation claims and personal injury are not handled by the Small Claims Court.

€2,000 is the ceiling for claims within the small claims system.

### What should I do before making a claim?

It is important to try and engage with the person or business to see if they are willing to properly address your complaint. You should keep copies of all correspondence that passes between you, and where you have spoken to them over the phone, you should note the times of the calls and the names of the people you spoke to. This is to show the court that you have tried to resolve the matter before approaching them.

The gathering of evidence is also important, meaning receipts, invoices, photographs, faulty goods, reports from independent experts; anything at all that pertains to your dispute.

### Where do I make the claim?

You should file your claim with the District Court Office closest to where the contract for the goods/services was made. In the case of damage, file with the office closest to where the damage occurred. You can find a list of District Court Offices at [www.courts.ie](http://www.courts.ie).

### How do I make a claim?

There is an online application system on [www.courts.ie](http://www.courts.ie); alternatively, you can download the form from the same website or pick it up from your nearest District Office, and then send it in by post.

The letter should be addressed to the Chief Clerk of the appropriate District Court, or, in Dublin, to the Small Claims Registrar.

### How much does it cost?

The fee for taking out a claim is €25. If you are applying online, you do not send this in until the Office has notified you that your claim has been approved. If you are posting your claim, include a money postal order or bank draft; again, the Office will not process this until your claim has been approved. If you wish to pay by cheque, it is important to contact the Office first and see if they accept such payment.

### What do I need to put on the application form?

The most important piece of information is the proper business address of the respondent, as registered with the Companies Registration Office (CRO). You should provide both the name of the Respondent and the name that he/she trades under: e.g. Mary Doyle trading as I Sell Cars Ltd. The address can be obtained from the CRO website [www.cro.ie](http://www.cro.ie), or by telephoning the CRO on 01 804 5200. If you are claiming against a private citizen for damage to your property, you should provide that citizen's residential address.

NB: If the wrong address is given, your case can be significantly delayed until the right one is found.

As well as the Respondent's address, the application form will ask for details regarding the claim and the sum of money you wish to claim for, which must be commensurate with the value of the goods/services that gave rise to your claim. Stick to the facts and avoid the more personal details of your dispute with the Respondent.

### What happens after I send in my claim?

After the claim is received and approved, the Small Claims Registrar will send a copy of it to the Respondent by registered post. Officially, the Respondent is given 15 calendar days to respond, though many Small Claims Offices will allow them a longer period than that. The Dublin Office, for example, gives six weeks. This is for establishing the intentions of the Respondent.

## What if the Respondent does not respond?

The process will then continue along one of the following two paths:

### 1

If the appropriate time period has elapsed and you have not heard from either the Registrar or the Respondent, you should contact the Small Claims Office. Remember that the onus is on you to contact the Office, not the other way around. If the registered Notice of Claim has not been returned to the Office, it will be understood that the Respondent has received the claim and is most likely ignoring it. You will then be asked to come into the Office to swear an Affidavit of Debt; a Payment by Default will be granted and a Notice to Pay sent to the Respondent. If, after another four weeks, you have heard nothing back from the Respondent, you should apply to the Office to have your decree issued so that you can present it to the Sheriff for enforcement.

NB: The Office advises people not to chase the Respondents themselves. As soon as there is any contact whatsoever between you and the Respondent, the Office will be unable to issue you a Payment by Default.

### 2

If the registered Notice of Claim does come back to the office, that means that either the wrong address was given or the Respondent has managed to evade taking possession of the letter. You will then be asked to come into court to make an application for substitution of service.

## What does substitution of service entail?

Generally, the Judge will ask you for evidence concerning the address of the Respondent. If he/she is satisfied that the Respondent continues to reside/trade at the given address, an order will be made for the claim to be sent out by ordinary post; as soon as it goes through the Respondent's door, the Respondent will be deemed aware of the proceedings.

If you have evidence that the Respondent trades/resides at a different address to the one initially given, and if the Judge is satisfied by this, the claim will be sent to the new address, either by registered or ordinary post, depending on the Judge's decision.

## What happens when the Respondent admits the claim?

The Respondent will return a Notice of Acceptance of Liability to the Small Claims Office. He/she will choose to either:

- Pay the full amount
- Pay with conditions attached (i.e. "refund on return of faulty goods")
- Consent to judgement
- Pay by instalments

Where the Respondent agrees to pay the full amount immediately, the payment will be facilitated by the Small Claims Office. If the Respondent wishes to attach any special conditions, he/she must notify the Small Claims Office, who will then notify you. Whether you accept these conditions or not is up to you. The Consent to Judgement is an unlikely option, but if the Respondent chooses this, all parties will be called into the Office, an Affidavit of Debt will be sworn, and a Notice to Pay drafted.

The Respondent can also agree to pay by instalments. Again, whether you accept such a condition is up to you.

## What happens if the Respondent disputes the claim?

The Respondent will send back a Notice of Dispute, a copy of which will then be sent to you. The Registrar will try and mediate between the two of you, most often by letter, and provide advice and comments where appropriate. If no settlement can be reached after an exchange of several letters, the Registrar will suggest that your case be referred to court.

## What happens if the Respondent counterclaims?

Counterclaiming is where the Respondent, being informed of the claim you have taken out, signals to the Registrar that he/she intends to take a claim against you. This cannot be done frivolously, but must have a real reason behind it; e.g. if the Respondent, in the course of providing you a service, had to purchase materials elsewhere and is now at a financial loss because you cancelled the service. Once the Notice of Counterclaim is sent in by the Respondent, along with the fee of €25, the Registrar will inform you and then list the matter for court straightaway.

## What if the Respondent approaches me directly?

If, at any time throughout the procedure, the Respondent attempts to contact you directly (whether by phone, letter, email etc) you do not have to respond to them. In particular, if the Respondent is attempting to intimidate you, you are not obliged to respond in any way; simply inform the Registrar of the situation and he/she will handle it.

## How long will all of this take?

Broadly speaking, you can expect the process of negotiation to take roughly two to three months where a claim is disputed, but bear in mind that every case is unique and no exact time-frame can be given to cover them all.

## How is a hearing date set?

When setting a hearing date, the Registrar will give you a reasonable amount of notice. Again, the amount of notice is not uniform across the board, though 14 days is the minimum.

The Registrar will generally discuss the hearing date with you in order to ensure that you will be able to attend. Remember, once the case is listed and the Notice of Hearing has gone out only a Judge will be able to change the date. At that stage you can request an adjournment but there is no guarantee that it will be granted.

NB: While there is a set day for hearings, there is no set time; you will have to turn up for the opening of the court (usually at 10.30) and wait in the courtroom until your own case comes up, so do not make any other arrangements for that day.

Note that children are not allowed to attend the court.

## Do I need legal representation?

One of the main benefits of the Small Claims Court is that there is no obligation on your part to recruit legal representation. If you want to, you can, but you will have to pay their fees, even if you win. In reality, it is very rare that Claimants make use of legal representation, as the nature of the claims usually render such legal expertise unnecessary.

## What can I expect to occur in court?

Our account of a day in the small claims court above should have given you a reasonable idea of what will happen, but here are a number of points to remember:

- Make sure that you arrive early and have all your documentation, photographs etc. with you.
- Before dealing with each case, the Judge will go through the list and enquire if there have been any settlements. If you and the Respondent have settled, you should inform the Judge of this at that point.
- NB: The Judge should always be addressed as "Judge."
- When your case is called you will be asked to come to the front of the court, where you will give your evidence to the Judge. The Judge will then seek details from both you and the Respondent, and once all the evidence has been heard and questions asked, the Judge will most likely make an immediate decision. If a crucial piece of evidence is lacking, the case might be adjourned until a later sitting so that you have time to obtain what is needed.
- If the Judge finds in your favour, the Respondent will be ordered to pay you and a Notice to Pay sent out. If the Judge finds against you, the case will be dismissed and no order granted.

## How is the decision of the court enforced?

The Respondent is normally given 28 calendar days to pay. If you do not receive your payment, you should contact the Office. They will send the decree to you, along with contact details for the Sheriff, who will be your next port of call. There is a small fee for the Sheriff (in Dublin it is €9.50) and you will be refunded this once the Respondent's assets are successfully seized.

N.B: If the Respondent's address on the decree is incorrect, the Sheriff will not be able to carry out the order, so make sure that the correct address is given.

Furthermore, if the Respondent has no goods or assets, the Sheriff will not be able to carry out a seizure.

A full layout of the small claims process can be accessed on our website at <http://thecai.ie/your-rights/small-claims-procedure/>

