



**Cycle-SOS**

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cycling  
UK**



**CYCLING UK SMALL CLAIMS PACK**

# HOW TO TAKE A SMALL CLAIM TO THE COUNTY COURT

A guidance booklet produced by Cycling UK in conjunction members by Cycle SOS,  
the specialist personal injury lawyers for cycle related incidents.

# SMALL CLAIMS IN A NUTSHELL

This leaflet is designed to assist you in pursuing your case yourself through the Small Claims Track, for bicycle and/or property damage only or minor personal injury claims combined with a claim for bicycle or property damage.

The Small Claims Track deals with disagreements where a claim for money is £10,000 or below, providing the case isn't complicated.

The legal costs which may be awarded are restricted to Court fees and a limited amount for fees which you may have had to pay, such as for medical reports. There is no separate award made for the cost of legal representation, other than a very nominal fixed fee, which makes it uneconomical for a solicitor to be instructed.

It is due to this, and the fact that legal costs can frequently out-strip the value of an award gained, that Cycling UK is, in most cases, unable to offer funding for legal representation on small claims cases.

**Please note that you may be entitled to legal representation if:**

- You have suffered injury, which could be worth more than £1,000.00 or
- You have suffered injury which is likely to be worth less than £1,000.00 **and** damage to property, so that the combined value or your claim including personal injury is more than £10,000.00.

If you feel this is the case, you should contact the Cycling UK Incident Line on 0330 107 1789 where you will be able to speak with Cycle SOS lawyers for assessment.



## WANT TO REPRESENT YOURSELF?

If you decide to pursue a small claim, you have two options:

- You can choose to employ your own solicitor at your own cost. Please be aware 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.
- You can represent yourself. The Small Claims process is a simplified procedure that is geared towards Claimants representing themselves, without legal representation. You can, if you wish, appoint a "lay representative" to help you in presenting your claim at court.

Should you decide to represent yourself, this leaflet is intended to help you guide you through the procedures.

The County Court has also produced a series of leaflets to help you with various aspects of your claim, copies of which are attached. We would particularly suggest that you read Leaflets EX301, EX306 and EX307.

Copies can be obtained either from your local County Court or by ringing our office. Useful information can also be obtained from the Court Service website at <http://www.justice.gov.uk/forms>

## WHAT ALL THE LEGAL STUFF MEANS

Read through the below to understand various legal terms:

- **'Road Accident'**: an unplanned unanticipated occurrence.
- A **claim form** is the court form you must complete to start the claim at Court in the Small Claims track.
- As the person who brings the claim you are the **Claimant**.
- Your opponent is the **Defendant**.
- A **counterclaim** is a claim brought by the Defendant, in response to the Claimant's claim form.
- All **hearings** are conducted by a **District Judge**, who will make all decisions of fact in the case, as well as guiding both parties on the steps needed to prepare the case for a final hearing
- Blame worthiness is called **liability**. The District Judge will decide this at the final hearing, if liability is contested by the Defendant
- The amount of money you claim is known as **Damages**.



## STACKING UP THE EVIDENCE

When you take someone to court, it is your duty to prove your case by producing relevant evidence to support your version of events, and to show the losses you have suffered. This is called 'the burden of proof'.

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

The burden of proof requires you to prove your case on the **balance of probabilities**, ie. more than 50%. You don't have to prove your case 'beyond reasonable doubt'. This is a different and higher standard of proof that applies to criminal cases only. So, in a civil claim, you only have to establish that your version of events is 51% or more likely to be correct.

The key issues to look out for are the speed of the vehicle, whether the driver should have anticipated something happening, eg. by checking his mirror, whether the driver failed to notice the presence of the cycle on the road or whether the driver failed to give way or precedence to the cyclist in circumstances where the Highway Code required him to do so. If you are a cyclist and there are various drivers involved who are all blaming each other, you may have to sue several of them. If your cycle accident occurred as a result of a defective road or highway, you will normally have to show that the defect was a significant defect. Even then the local Highway Authority has a defence against liability if it can show that it has a proper system of inspection and repair. Even if the local authority claims this, do not accept it at face value. Ask to see all the documents in support to show their system of maintenance and inspection. It may well be that the system was not operated properly.

## WHEN YOU'RE PARTIALLY TO BLAME

It could be decided that you were partly to blame for the accident, for example, by cycling in a manner whereby you are putting yourself at risk. This is known as contributory negligence. If proven, the damages which you would otherwise be paid will be reduced by the percentage that you are assessed to be to blame.

If there is any intimation of a claim by the other party for their losses due to fault on your part, notify the Cycling UK third party liability insurers immediately. Contact Butterworth Spengler Insurance Brokers on 0151 494 4400 and mention Cycling UK.

## WHEN SOMEONE ELSE IS TO BLAME

Care needs to be taken if your accident was caused by someone driving in the course of their employment. This is because their employer may be vicariously liable for the actions of their employee during the normal course of their employment. For example if a lorry driver caused the accident, it should alert you to the possibility of the employer being legally liable, rather than the driver.

## GATHERING EVIDENCE

You will need to gather evidence to disclose to the Defendant, and to produce at the hearing. Try to collect and preserve evidence as soon as possible where there's a possibility the evidence may disappear. This must be your priority as soon as possible after your accident. This often involves photographing and measuring and taking the names of witnesses in case they are needed, or finding out if there is any CCTV. In most situations CCTV is only kept for a limited period and may be erased if it is not obtained quickly.

For example, if your accident was due to a defective road, photograph the defect in the road that you state caused your accident. It may otherwise have been repaired by the time you revisit the area. Make sure that your photograph identifies the defect by reference to the road it was in. Take photographs which include a road sign or house nearby. If possible, use a camera which prints the date on the photograph.

Measure the dimensions of potholes, protruding objects etc and photograph them. Use a coin such as a 50p piece or a tape measure in your photos to show the dimensions of the highway defect.

Photograph the damage to your bicycle showing where the impact occurred etc.

If you have photos on your phone, make sure you back them up or print them off. Make sure you back up and store any electronically held evidence safely somewhere other than just on the original device, for example on a separate hard disk, PC, or the cloud.

Take the names and addresses from witnesses and find out what they are going to say about the circumstances of your accident whilst matters are still fresh in their mind.

## WHEN THERE IS DAMAGE TO YOUR BICYCLE

The aim of damages in civil law is to provide financial compensation to restore the Claimant to the position that he would have been in had the accident not occurred. As an example, if you had bought a bicycle a year before the accident for £500, it is unlikely that the Court would award you £500 in damages. The Court would apply a discount for reasonable wear and tear, meaning that the eventual award would be less than £500. Because of this, it is often worth taking your damaged bicycle to a bicycle shop to obtain a written estimate of its value at the time of the accident. If the bicycle is capable of repair obtain a written estimate.

Do not dispose of the bicycle or other property which you are claiming for until the case has been settled or a final decision has been made by the Court.

## ASSESSING DAMAGES FOR PERSONAL INJURY

If you have also been injured, you may wish to include a claim for those injuries. How much your injuries are 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 a personal injury claim, but the District Judge who hears the final hearing will be experienced in personal injury cases.

As a broad guideline, a claim for minor injuries that completely resolved in 2 weeks or less are not likely to be worth in excess of £1000.00. Cases where injuries persist for 2 weeks or more are more likely to exceed the small claims limit of £1,000.00 particularly if there have been visits to the doctor and perhaps some treatment, e.g. physiotherapy, and you should seek legal advice from a solicitor for a more accurate assessment of the value of the claim. A claim for mere shock or upset on its own will not count as a personal injury claim. If there are no physical injuries, then a claim can only be pursued if a recognisable psychiatric condition has been suffered.

## WHEN THERE ARE OTHER EXPENSES

If you have other expenses such as medical expenses, car hire or insurance excess you are entitled to reimbursement of these in addition to your claim for the damage to your bicycle, personal belongings and any injuries.

If your bicycle is insured through the Cycling UK under the "Freewheeler" insurance scheme, then there will be an excess of £25.00.

If a claim is made against you and you are invoking the third party cover provided for Cycling UK members, there is currently no excess to pay.

If you are away from work as a result of your injuries you may suffer from a loss of earnings in which case you can substantiate this part of your claim by obtaining a letter from your employers stating the net sum lost, or by providing your business accounts if you are self-employed.

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 8% per annum on the financial losses. The Court will only allow the 2% rate from the date when you issue proceedings and the 8% figure can be reduced by the Court.

## SO... HOW DO YOU PROCEED?

You will need to start your claim before its limitation period runs out. Limitation periods differ depending on the cause of action. There is a standard three-year time limit for cases involving personal injury claims. The limit applies from the date of the accident or from date of knowledge that you have been injured, whichever is the latest.

Before issuing proceedings, you should write a letter to your opponent called the letter of claim. This describes the damage and, if applicable, injuries 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 how you say the accident occurred, why you allege the other party was legally to blame, any injuries you suffered and what other losses or expenses you have incurred.

Your letter is likely to be passed on to your opponent's insurers, with whom you will then be dealing. Insurers are not normally motivated to respond promptly to your claim. If the insurers will not negotiate or if you think that any offer is inadequate, you may find that you have to issue proceedings to encourage them to try and settle your claim more quickly.

If you have included a claim for personal injury, you should not commence Court proceedings within three months of writing your letter of claim. Insurers have three months to investigate the claim from the date they receive your letter. Within those three months they have to either agree to settle your claim or they have to give their full reasons why they dispute that they were to blame. Even if you are claiming property damage only, it is good practice to allow a reasonable time for the insurers to look into the matter and respond before you issue proceedings.

## SETTLING YOUR CLAIM

A settlement can be reached before you issue proceedings or after proceedings have been issued, right up to the time of hearing. Any correspondence you send about a settlement should be headed with the words "Without Prejudice". This means that your correspondence cannot be shown to the Court without your permission and it enables both parties the freedom to make offers of settlement.

It is unlikely that your opponent, or their insurer, will immediately offer as much as they are ultimately prepared to pay. Make sure that when you agree upon a settlement figure you make it conditional upon your opponent also agreeing to reimburse you with the money that you have spent to run the claim, eg. medical report fees and Court fees. This should be in addition to the damages you receive, not deducted from them.

## ISSUING PROCEEDINGS

In order to issue proceedings you need to obtain a form called the N1 Claim Form from the County Court. You can find the address of your local County Court online. Tell the Court what type of case you are bringing, and they will tell you the form to use. Before you issue proceedings make sure that you know where the Defendant is and whether he or she has insurance. If not, consider whether they have the personal means to pay you. There is little point in suing a Defendant who has either disappeared without trace or simply cannot afford to pay you.

In road traffic accidents involving a personal injury claim and where the driver who caused the accident is uninsured or has never been traced, you can make a claim instead to the Motor Insurers Bureau.

The Motor Insurers' Bureau (MIB) can be found online - <https://www.mib.org.uk/> - and their website is designed to help make your claim without representation.

When you have obtained the appropriate Claim Form, fill in the basic details and attach a statement explaining why you believe that the Defendant is to blame. List any out of pocket expenses which you are claiming. If you are including a claim for your injuries, you don't have to specify on the form exactly what sum of money you are claiming, just that you are claiming damages for your injuries.

If you are claiming for personal injury you must also obtain a written medical report to serve with the proceedings. You should have obtained this well before Court proceedings are issued. You can obtain a medical report from your General Practitioner or from the doctor who treated you at hospital. The doctor will normally charge you a fee for providing it. So long as the fee the doctor charges is reasonable (and does not exceed the limit allowable by the small claims court, currently £750), it should be recoverable along with any court fees you have to pay, if you win your case.

For property damage claims only, you should not obtain expensive experts reports, unless the Court gives you permission to do so. You may not be able to recover the cost of those reports even if you win your case, if the Court considers that they were not necessary, or were too expensive taking into account the actual value of the claim. If the Court does allow the report, the amount which can be awarded is limited (currently to £750).

Where a Defence is entered the Court will send you a document called an Allocation Questionnaire. You must complete this in full and return it to the Court within 14 days. Unless the case is particularly complicated, the Court will then allocate your claim to the small claims track and send you written instructions called Directions which you must follow to the letter.

The Court may allow the Defendant to obtain their own evidence about your claim. This could include obtaining their own medical report about your injuries, or a report from a qualified engineer regarding any claim for damaged property.

During the court process you will be required to disclose all relevant documents about your claim to the Defendant. The Court will set a deadline by which you must do this. It will generally require you to disclose all evidence in your possession regarding the amount of your claim, as well as any evidence regarding the issue of liability, such as witness statements, photographs and CCTV footage.

One document which is often very useful to obtain after a road traffic accident is the Police Accident Report. This can be obtained for a fee. The level of fee payable can vary, and you should check by going to the website for the police force in the county or metropolitan borough where the accident occurred. Normally the Court will accept the report of the investigating Police Officer without that Officer having to attend the Court 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 the attendance of any witness at the hearing.

It is really important to comply with all the directions that the Court gives, and by the given deadlines. Failure to comply with court directions is a serious matter and it can result in your claim being dismissed. Equally, if the Defendant fails to comply with Court directions it can result in the Defence being dismissed. It is important that you make a diary note of any deadlines that the Court gives, and that you ensure you are well prepared to comply with them. If you need more time to comply with a Court direction, you will need to apply to the Court with your reasons, before the deadline has lapsed.

## AND IF THERE IS A COUNTERCLAIM?

If your claim is defended, the Court will send you a copy of the Defence so that you know what the Defendant has to say about your case. This will enable you to understand fully why your claim is disputed, or whether any parts of your claim are admitted. If the Defendant wants to make a claim against you, they will have to do this by including a Counterclaim.

Under your Cycling UK membership, you will be indemnified for costs for damage to a third party. This is covered with third party indemnity through Cycling UK. The provider will then take over the conduct of your case and provide legal advice. If you do not notify your insurers, they may refuse to cover you.

## THE HEARING

A 'hearing' is the name given to any attendance you have to make before the District Judge. For a small claim there is usually just one final hearing, but the District Judge might order a preliminary hearing to sort out some issues before the final hearing.

Always aim to attend the final hearing smartly dressed. Also, it always helps to address the District Judge properly. If the District Judge is male, they should be addressed as "Sir", if female as "Ma'am". These two things really can make a difference in helping you get on the right side of the District Judge from the outset.

Talking of court etiquette, always remain polite, even if tensions rise. Always remember that you are attending Court because of a dispute, and both sides are entitled to give their versions without interruption. Even if you know the Defendant is not telling the truth, keeping calm and polite during the hearing will stand you in very good stead.

As the Claimant, you will present your case first at the final hearing. The District Judge will ask you to say what happened. When you have given your evidence, you may be cross-examined by the Defendant or

his or her representative. You will then call your witnesses to say what happened and they may also be cross-examined by the other side. When you and all your witnesses, if any, have given their evidence that concludes your case. By this stage you must have introduced all the facts, documents and exhibits which you are relying upon either in your own evidence or that of your witnesses. It is too late to introduce them once your case has been concluded.

It is then the turn of the Defendant. The Defence witnesses will give their evidence and you have the opportunity to cross-examine them. The Defendant or his or her representative then has an opportunity to sum up for the Defence, trying to show why on the evidence the Defendant is not to blame.

You have the final word and will sum up last. If there is a conflict, in the evidence that has been given, try to show why your evidence and that of your witnesses is to be preferred. You can help achieve this by emphasising any inconsistencies in the evidence the Defendant has given.

# OTHER STUFF YOU NEED TO KNOW...

## CHECKLIST

Below is a checklist for pursuing a small claim action. Go through this and it should be relatively straightforward. We wish you the best of luck.

- ✓ 1. Protect your evidence. Don't forget CCTV – local shops or businesses could have valuable evidence, but it can be destroyed quickly
- ✓ 2. Send the letter of claim to the other side to include:
  - (a) description of injury/damage
  - (b) explain why the other side is to blame
  - (c) what your claim consists of
  - (d) invite their proposals for settlement
- ✓ 3. Obtain a medical report and/or estimate for replacement/repair to any damaged property.
- ✓ 4. Try to negotiate or get the other side to make a proper offer.
- ✓ 5. If unsuccessful, issue Court proceedings by:
  - (a) getting appropriate Claim Form
  - (b) fill in basic details
  - (c) state why Defendant is liable
  - (d) list out of pocket expenses
  - (e) claim damages (don't say how much, if claim for personal injury is included).
- ✓ 6. If the Defendant does not put in a Defence in the time allowed, write to the Court asking for Judgment to be entered in your favour.
- ✓ 7. If the Defendant does put in a Defence, the Court will then guide you on the next steps, including time limits for complying with them – please ensure you comply with these!
- ✓ 8. Disclose relevant documents to the other side and ask for theirs – at least 14 days before the hearing unless the court orders otherwise.
- ✓ 9. Submit to medical examination and experts reports, if required by the other side and if ordered by the Court.
- ✓ 10. Make sure that your witnesses know about the date of hearing and will attend.
- ✓ 11. Prepare carefully for the hearing
- ✓ 12. Observe good court etiquette – dress smart, be polite, remain calm

**If you have any queries about any stage of this process, please do not hesitate to telephone Cycling UK Incident Line and our advisers will be happy to assist you.**