

**DATA PROTECTION ACT
TAKING A CASE TO COURT**

EIGHT



Information Commissioner

DATA PROTECTION ACT – TAKING A CASE TO COURT

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INTRODUCTION

This leaflet provides you with the means to take a claim to court against a data controller under the Data Protection Act. It explains the procedures and terminology you will face along the way, and will give you guidance on how to find any further information you may need.

To help you further, we have provided a glossary of terms below that are used throughout this leaflet.

This leaflet is part of a series of eight leaflets which explain your rights under the Data Protection Act.

Details of other leaflets can be found at the back. If you would like copies of the other leaflets please contact the Information Commissioner's Office. You will find our contact details on the back cover.

TERMS TO HELP YOU

Claimant – The person who is making the claim.

Data controller – Anyone who determines the purposes for which and the manner in which personal data are, or are to be, processed.

Defendant – the person or organisation against whom the claim is being made.

Damages – compensation awarded to you in the case of a successful claim.

Legal Stationer – a retailer who sells legal stationery.

Liquidated damages – which means that you have claimed compensation and specified the amount claimed.

Un-liquidated damages – which means that you have made a claim for damages but have not specified the amount of such damages.

Subject access request – a written request to a person or data controller to find out whether personal data are held about you and, if so, what personal data are held.

WHAT DO I NEED TO DO BEFORE I ISSUE PROCEEDINGS?

The Court will wish to know what steps you have taken to try to settle the claim. This means that you must write to the data controller or speak to him to see if you can reach an agreement. Further advice can be found in the leaflets highlighted on the inside back cover. They are available from the Commissioner's website www.informationcommissioner.gov.uk or contact the Commissioner's Office on 01625 545745.

It may also be a good idea to find out whether there is an ombudsman or other regulatory supervisory body who will look into your complaint to see if a satisfactory outcome can be achieved without the need to go to court.

You will need to bring your claim within what is known as the limitation period. A general limitation period of six years applies from the date the cause of action arose. There are a number of specific exemptions to this rule, notably in the case of personal injury claims for which the limitation period is three years.

DO I NEED TO TELL THE DATA CONTROLLER THAT I PROPOSE TO ISSUE PROCEEDINGS?

Yes, it is advisable to write to the data controller before you start court proceedings to tell him that you intend to take the matter to court. You should send the letter by recorded delivery and address it to the person with whom you have been dealing or to the company secretary. This may, in some cases, have the effect of prompting the data controller to settle the dispute.

A suggested form of letter is set out on the next page:

**Your full address
The date**

Dear Sir or Madam

[Subject matter of the dispute]

I refer to our previous correspondence with regard to [here insert details of the dispute together with reference to the appropriate provisions of the Data Protection Act 1998 alleged to have been breached].

Please take note that unless I hear from you within the next 14 days with your proposals to settle this matter, I shall be issuing proceedings against you in the County Court for breach of section[s] [] of the Data Protection Act 1998 [together with a claim for damages [and distress] under section 13 of the Data Protection Act 1998 plus costs].

Yours faithfully

Signature

WHERE DO I ISSUE THE PROCEEDINGS?

Most claims will be dealt with in the County Court or in the Sheriff's Court in Scotland.

You can start an action in your local County Court/Sheriff's Court and if the case is defended the court will decide what procedure should be used and whether the case should be transferred to a different court.

If the case is a simple one, with a value of £5000 or less, the court will usually decide that the small claims procedure should be used (i.e. the case will be allocated to the "small claims track"). If the case is a small claim and you win your case, you will be able to claim back your court issue fee from the data controller but you will not be able to claim any other legal costs (e.g. solicitors' fees).

If the case is allocated to the small claims track and the defendant (the person or organisation against whom the claim is being made) successfully defends the claim it would not be usual for the court to order the claimant to pay the defendant's costs. However, if the claim is for a greater amount, or it involves particularly complex issues, it is likely to be allocated to a different "track" (e.g. "the fast track") and the court will then usually order whoever loses the case to pay the legal costs of the other party.

Details of how to make a claim where you are asking for a specific right to be complied with, not necessarily combined with a claim for damages, such as a right to require a data controller to stop sending you direct marketing material or your rights in connection with a subject access request, are found in the Claiming Specific Performance section on page 12 of this leaflet.

HOW DO I START A CLAIM?

If you make a claim you will be referred to as “the claimant”.

The person or organisation against whom the claim is being made (the data controller) is called “the defendant”.

Any compensation awarded to you as a result of making a successful claim is called “damages”.

- The claimant starts a claim by filling in a claim form. This can be obtained from any county court, legal stationer or from the court website on **www.courtservice.gov.uk**.
- The claim form asks for details of the claimant and defendant and how much is being claimed in damages. **If you are not sure how to complete the claim form you should ask for advice from the court, a solicitor or the Citizens Advice Bureau.**

The claim form includes a space for you to write out the details of your claim. This is called the “**particulars of claim**”. *You should include all the relevant facts of what has happened but try to keep the details as brief as possible.* It is a good idea to use short numbered points or paragraphs. If there is not enough room on the form you can use a separate piece of paper.

You will need to provide the court with two copies of your claim form and you should keep another copy for yourself.

CAN I CLAIM INTEREST ON DAMAGES?

You may be able to claim interest on any damages awarded from the date the claim arose to the date the damages are paid but you will need to say clearly in the particulars of claim if you want to include a claim for interest.

WILL I HAVE TO PAY A FEE?

There will be a court fee and the court will tell you what this is. The amount of the fee depends upon what you are claiming. In some circumstances, for example, if you are receiving income support or certain other benefits, there may be no fee.

The court will be able to advise you further about this. Legal aid may be available to you and if you think that you may be eligible for legal aid you should contact a solicitor for advice. Your local Citizens Advice Bureau or Law Centre may also be able to advise with your case.

WHAT HAPPENS NEXT?

The court will check the claim form and in most cases send it to the defendant. You will be given your own copy with the case number on it and a “notice of issue” form which will say when the case was issued at court and how long the defendant has to reply. The court will provide you with a number of leaflets that tell you what to do next. Very briefly, the main options are as follows:

CLAIMING FOR UNLIQUIDATED DAMAGES.

1. If you have made a claim for a breach of the Act together with a claim for unliquidated damages the defendant might:

(a) deny that he has breached the Act;



If the defendant denies that he has breached the Act the court will give you instructions as to what to do to enable the case to proceed to a hearing.

(b) agree that he has breached the Act but make no offer of compensation or deny that the breach of the Act has caused you any damage or distress;

You may enter judgment against the defendant and the court will arrange a hearing date to decide the level of damages (if any) payable.



(c) agree that he has breached the Act and offer a sum of money by way of damages; or



If you accept the offer, you may enter judgment for the amount of damages. You may wish to obtain legal advice as to the amount of damages offered. If you reject the offer of damages the court will give you instructions (called “directions”) to enable the case to proceed to a hearing to decide what damages you should receive.

(d) not respond at all.



You can apply for “judgment in default” and the court will give directions as to how and when the amount of compensation, if any, will be decided.

CLAIMING FOR LIQUIDATED DAMAGES.

2. If you have made a claim for a breach of the Act together with a claim for liquidated damages the defendant may:

(a) deny that he has breached the Act;



If the defendant denies that he has breached the Act the court will give you instructions as to what to do to enable the case to proceed to a hearing.

(b) agree that he has breached the Act but makes no offer of compensation or deny that the breach of the Act has caused you any damage or distress;



You may enter judgment and the court will arrange a hearing date to decide how much compensation (if any) is payable.

(c) agree that he has breached the Act and offer a sum of money in compensation that is less than the amount you have claimed; or



If you accept the offer, you may enter judgment for the amount of the damages. You may wish to obtain legal advice as to the amount of damages offered. If you reject the offer of damages, the court will give you instructions (called “directions”) to enable the case to proceed to a hearing to decide what damages you receive.

(d) not respond at all.



*You can apply for **“judgment in default”** for the full amount of your claim.*

CLAIMING SPECIFIC PERFORMANCE

3. If you apply for action to be taken to comply with a specific right, this is known as a claim for specific performance. If you are not asking for damages as well, there are two possible procedures the court could adopt to deal with your claim:

PART 8 PROCEDURE

The shorter procedure is called a Part 8 procedure. This procedure will only be used where the claimant is asking the court to make a decision about a question which is unlikely to involve a very great dispute about the facts.

An example might be where you have requested a data controller to stop sending you direct marketing material but the data controller has failed to honour your request. In this case you are making an application to the court for an order that the data controller take such steps as are necessary to comply with your request.

Another example might be where you have properly made a subject access request, enclosing the correct fee and more than 40 days have passed and you have not received any response. You are, therefore, making an application to court for an order that the data controller answer your subject access request.

If the Part 8 procedure is used and the defendant acknowledges receipt of the claim, he can attend the hearing to say whether he denies or accepts that he has breached the Act. If the defendant does nothing, he will still be allowed to attend the hearing but he will not be allowed to take any part in it without the court's permission.

PART 7 PROCEDURE

If the case is likely to be more complicated because for example there is a dispute about the facts, a longer procedure will be adopted (the Part 7 procedure) in which case the defendant may:

(a)deny that he has breached the Act;



The court will give you instructions as to what to do to enable the case to proceed to a hearing.

(b)admit that he has breached the Act but suggest an alternative solution;



You can accept the solution offered and ask the court to make an order recording what you have agreed or refuse the offer and continue with the next step towards a hearing which will be explained to you by the court. You may wish to obtain legal advice at this stage as to what has been offered to you by the defendant as a possible solution.

(c) admit that he has breached the Act and agree to comply as you have suggested; or



You may apply for an order recording what has been agreed.

(d) not respond at all.



*You can enter **"judgment in default"**.*

WHO WILL DEAL WITH MY CASE IN COURT?

If your case proceeds to a hearing this will usually be before a District Judge or a Deputy District Judge who should be addressed as "Sir" or "Madam".

WHAT SHOULD I DO IF I NEED AN INTERPRETER OR DISABLED FACILITIES?

If you require any special help such as an interpreter or disabled facilities you should let the court know as soon as you have been given a hearing date.

I WILL HAVE DIFFICULTY IN ATTENDING COURT ON THE HEARING DATE I HAVE BEEN GIVEN. WHAT SHOULD I DO?

You should let the court know, in writing, as soon as possible, if you are unable to attend court for any reason.

For example if you are on holiday, or due to be in hospital on the date you have been given for a hearing.

The judge will then decide whether he can adjourn the hearing to another date.

If you have transport or financial difficulties which will prevent you from attending a hearing you can ask the court if the hearing may be dealt with over the telephone, although this may be difficult if there are a lot of documents to refer to.

I DO NOT HAVE A SOLICITOR BUT I HAVE A REPRESENTATIVE WHO WILL SPEAK ON MY BEHALF. WHAT SHOULD I DO?

You can take someone with you to speak for you as long as you have the permission of the court. If a representative is to speak on your behalf you should tell the court and the defendant as soon as possible.

I WOULD LIKE TO CALL A WITNESS. HOW SHOULD I DO THIS?

If the claim is defended, you will be sent an “allocation questionnaire” to complete. The court will give you help with this. In the questionnaire you will be asked how many witnesses you would like to have.

The Information Commissioner and his staff **will not** usually take any part in court proceedings commenced by you. However, if you or the defendant require someone from the Information Commissioner’s Office to give evidence, this is known as **expert evidence** which will only be allowed if the judge orders it. The reasonable costs of a witness would have to be met by the party calling the witness.



1. YOUR RIGHTS AND HOW TO ENFORCE THEM



2. SUBJECT ACCESS - A GUIDE FOR DATA SUBJECTS



3. INCORRECT INFORMATION - WHAT CAN I DO?



4. HELP! HOW CAN I STOP THEM PROCESSING MY PERSONAL INFORMATION?



5. STOPPING UNWANTED MARKETING MATERIALS



6. PREVENTING DECISIONS BASED ON AUTOMATIC PROCESSING OF MY PERSONAL INFORMATION



7. CLAIMING COMPENSATION

To order copies of the above leaflet contact the Information Commissioner's Office. You will find the details on the back cover.

Citizens Advice

Myddleton House
115-123 Pentonville Road
London
N1 9LZ

T: 020 7833 2181

W: www.citizensadvice.org.uk

W: www.adviceguide.org.uk

Court Service

T: 020 7210 2266

W: www.courtservice.gov.uk

The Department for Constitutional Affairs

W: www.dca.gov.uk

Legal Services Commission

T: 020 7759 0000

W: www.legalservices.gov.uk

Publication Request

t: 01625 545 700

f: 01625 524 510

e: mail@ico.gsi.gov.uk

Enquiries

t: 01625 545 745

f: 01625 524 510

w: informationcommissioner.gov.uk

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Data Protection

Information Commissioner's Office,
Wycliffe House, Water Lane,
Wilmslow, Cheshire SK9 5AF