



Debt and the District Court

Why might I be taken to the District Court for debt?

The District Court is often used by financial institutions to recover money they consider you owe to them when you fail to keep to the terms of a credit agreement. Goods and service providers (such as building contractors, garages and so on) may also use the court to recover money they feel you owe them.

How can I prevent people from taking me to court?

No one can legally stop a company issuing a summons if they want to. However, if you are experiencing difficulties in making payments, being open and honest with your creditors about the full extent of your financial circumstances is generally the best way to prevent them taking legal action against you.

Write to the company with details of your income, spending and credit commitments. Explain to them your household situation and the reason(s) why you are unable to pay the full amount (such as illness, a drop in income or increase in spending). Make sure any proposals you make are realistic, also also that you keep copies of anything you send.

Does the fact that I get a summons mean that I owe the money?

Not necessarily. You may dispute that you owe the company anything at all, if for example you feel that you are being charged for goods or services that you are unhappy with. It may be that you consider that though you owe the company money, you do not owe them as much as they claim, as perhaps they have not taken all the payments you have made into account.

On the other hand, you may agree that you owe the money claimed, but you need more time to pay, if your circumstances have changed since you took out the agreement.

What should I do?

The initial summons will give you a number of options, which give you the chance to either admit you owe the money, or to defend the claim because you feel you do not owe all or some of the amount claimed. The Irish legal system unfortunately does not provide the chance for you to agree that you owe the money and to ask the court to consider an affordable offer of payments that suit your means.

If you would like to make an instalment offer, the best approach is to contact the creditor's solicitor, their name will be on the summons. Send them a short letter giving details of your household circumstances,

and attach a copy of your budget to show what you can afford.

Though it will buy time, we don't recommend that you enter a defence, unless you are disputing some or all of the claim. Entering a defence will lead to a hearing and the likelihood of increased costs.

It may be that documents and procedures used by a credit institution do not comply with the Consumer Credit Act 1995. If so, you may have grounds for a defence. You will need to act quickly though, as you only have a short period of time. Your local MABS office or the Irish Financial Services Regulatory Authority (IFSRA) – on Lo-call 1890 777 777 – can advise you further.

What should I not do?

The worst thing you can do is ignore the summons, do nothing and hope that it will go away. The creditor will almost certainly apply for a judgement against you and will proceed to enforce this judgement to get their money.

Ignoring later summonses that ask you to attend court to explain your circumstances could result in you facing prison, even though the debt itself is fairly small, as you may be considered to be showing contempt for the legal process.

What steps might the creditor take once they have a judgement against me?

Though there are other options, the most common way to enforce a debt is for a creditor to summons you to attend court on a certain date to explain your means. This may seem a threat, but it actually offers you an opportunity to be open about your circumstances and to repay the debt in affordable instalments.

You will need to first draw up a budget (this is often referred to as a statement of means) showing your income, expenses, credit commitments and your repayment proposals based on this. You should send a copy of your budget and a letter explaining your circumstances, to the court clerk and to the creditor's solicitor. Both addresses will be on the summons. You can get a budget sheet listing a number of common items of spending from any MABS office if you feel it would help – this is also available on our website (see below).

Then the court (not the creditor) decides at the hearing what would be a realistic amount for you to pay each week or month, based on the information you have provided. You must attend this hearing in case your statement of means (budget) is disputed and anybody asks you to explain any of the details or figures you have given. In our experience, the court will generally agree to proposals made in this way and will make an instalment order that you pay this amount each week or month.

As you can see, if you ignore such an opportunity, the court will only have the creditor's view to go on, so you may end up being ordered to pay a lot more than you can actually afford.

What happens if I fail to pay instalments ordered by the court?

If you fail to keep to the payments ordered by the court, you are in breach of a court order, so it is important to try to make sure that you can afford the instalments in the first place. The creditor may then decide to summons you again to attend court to explain why you have failed to keep up payments. This summons is called a committal summons.

It is vital that you attend a court on the date specified in the summons.

If you can show the court that you are not wilfully refusing to pay the instalments, you will not go to prison. Again, giving the court a copy of your budget and explaining your circumstances should be enough to prevent this. If you fail to attend court, the court will have no alternative but to order that you be committed to prison.

Another way of preventing matters reaching this stage is for you to apply for the amount specified in your instalment order to be varied, for example if your financial circumstances change. The District Court Clerk can advise you how to go about this. Again you will need to forward a copy of your budget to both the court and the creditor's solicitor.

Remember – don't ignore the problem

Ignoring things is the worst thing you can possibly do. If you would like further guidance as to how to deal with money problems, please visit our website, www.mabs.ie, or contact your local MABS for an appointment to speak to a Money Adviser in confidence.

Disclaimer

Every effort has been made to ensure that the information contained in this leaflet is accurate, but the Department of Social and Family Affairs accepts no legal responsibility for any errors or omissions contained in it. If you have a specific legal query relating to matters raised in this leaflet you should get detailed legal advice.



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The Money Advice and Budgeting Service (MABS)

**This leaflet is prepared on behalf
of the Money Advice and Budgeting
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and independent service for people
with debt and money management
problems.**