

Chapter 1

Unravelling the Legal Web

In This Chapter

- ▶ Understanding the origin of UK laws
 - ▶ Knowing how the courts, police, and lawyers put the laws into practice
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The legal system in the UK is complex. The Government draws up laws, while Parliament passes them. Because the UK is part of the European Union, the UK Government must put into practice laws drawn up in Europe. If UK laws and European laws conflict, European law wins.

The judges in courts have the difficult job of making sense of all the laws and working out exactly what the legislation says and means. Their decisions are important when it comes to clarifying legislation. In addition, there are local laws in different parts of the country (you probably won't hear about them until you've broken them), as well as old laws still in existence that everyone forgot about years ago.

This chapter helps make the whole legal process a little bit more comprehensible and less intimidating. The law is what your rights are based on, and if you want to be sure you understand your rights, you need to understand the system.

Untangling the Legal System

The legal system is multilayered. Laws come from two different sources – the UK and Europe. But no piece of legislation is clear-cut, and each law can often be interpreted in more than one way. That's why the courts play a role in helping citizens understand what the legislation was meant to mean. This section gives you an idea of how UK laws come into force.

Legal differences throughout the UK

England and Wales share a *legal system* – the same court structure and the same laws. However, since the establishment of the Welsh Assembly, Wales does have limited powers to make some of its own laws, which is why some law or policy differences may exist. For example, prescription charges for medicines are different in Wales.

Northern Ireland also has an Assembly, but due to political disagreements, it's often suspended, and so government reverts to Westminster. As a result, Northern Ireland and England have some differences between laws – for example, in Northern Ireland, you have to be married for two years before you can apply for divorce, whereas in the rest of the UK it's only one year, and the High Court in Northern Ireland deals with divorce instead of the country court. (For more information on the Northern Ireland system, visit www.direct.gov.uk.)

Scotland has its own parliament, consisting of Scottish MPs who can pass legislation for Scotland. The education system is different in Scotland, and University students there don't have to pay fees. In addition, the rules on paying for long-term care for elderly people, and the house buying and legal systems are substantially different. (You can find more information on the Scottish legal system at www.scotland.gov.uk.)

Constitution, Acts of Parliaments, and common law

The UK has no constitution in the sense that no one document sets out the powers of the Government. The Parliament Acts of 1911 and 1949 set out the powers of the Houses of Commons and Lords. The *House of Commons* is the chamber of Parliament where elected MPs sit and debate; the *House of Lords* is where the Peers influence the law-making process and is the highest court in the UK. The European Communities Act makes the UK part of the European Community – the European Union of 25 member countries – with all the legal implication that entails.

The Government uses its powers to draw up legislation. At the beginning of each parliamentary year, the Queen gives a speech in which she outlines the laws the Government wants to make or change during that year. Parliament then debates each bill drawn up.

Parliament includes members of the House of Commons and the House of Lords. MPs in the Commons debate each bill at several readings and ask for

amendments before the bill is presented in its final form for voting on whether it should become law. If Parliament passes the bill, it then goes to the House of Lords for approval. If the MPs vote to pass a piece of legislation but the Lords reject it, it goes back to the House of Commons for MPs to look at it again, but ultimately, the Lords can't stop the Commons from passing a bill. Eventually, the legislation is either rejected because too many MPs vote against it, or it's passed and becomes law.

At the time of writing, the Government has drafted an *Animal Welfare Bill*, which, amongst other things, if passed, raises the age at which a child can buy a pet from 12 to 16 and makes it illegal to dock dogs' tails. If the legislation becomes law, it will become the *Animal Welfare Act* and be dated with the year it passed. It will then be an *Act of Parliament*.

The Queen has to approve each *Act of Parliament* – it's given *Royal Assent* – and then it becomes law. The Government, which came up with the proposals in the first place, then has to put the law into use. The Government is different from Parliament. The elected MPs who are appointed by the Prime Minister to act as cabinet ministers, their government departments (such as the Department of Health), local authorities such as the members of a City Council, and civil servants are the Government. Not only does the Government have to make the laws and put them into practice, it also has to abide by them.



Acts of Parliament also give government ministers the power to make changes through what's called *secondary legislation* or *statutory instruments*, which are usually used to make minor changes and go through a much less rigorous process before becoming law.

The problem with most pieces of legislation is that you can interpret the many clauses in multiple ways. That's where the courts come into the equation. *Judges* interpret the law, and their decisions build up into a body of case law, known as *common law*. Judges are independent of Parliament. They can't decide that legislation passed by Parliament is unlawful, although they can, in some cases, overrule statutory instruments. Judges, however, can decide that the Government has broken its own laws and can preside over cases taken against the Government.

As an example, take the law on discrimination. If someone makes a claim against someone else, for discrimination on the grounds of disability, *solicitors*, appointed to act for each side, try to reach a settlement. Each solicitor is arguing that his client is in the right. If a settlement isn't reached and the case goes to court, each side has a *barrister*, or an *advocate* in Scotland, representing them. Each barrister prepares an argument that supports her client, and the judge then decides who is right and who is wrong. In certain types of cases, the decision then influences the outcome of other similar cases. That's common law.

The lower courts are bound by decisions made in higher courts. These decisions set *precedents*. The House of Lords is the highest court in the land, and all the lower courts must adhere to its decisions. The House of Lords is also the highest court of appeal for all the UK, except Scotland, where it is the highest court of appeal for civil cases only.



Because of the role the courts play in interpreting legislation, the law changes and matures as time passes. Each time they decide a case, the courts are clarifying the laws. For that reason, predicting an outcome of a particular case may be difficult. Any previous court case on a similar matter may be a factor.

Outside influences

Because the UK is a member of the European Union, European law has become more important. If UK law says one thing and European law says another, European law takes priority. For example, the *Working Time Regulations under the European Working Time Directive* sets out the rules about how long an employee can be expected to work during the average working week (see Chapter 9). When the Directive first came into effect, the UK was allowed to opt out of implementing the rules for a while for certain workers. It has now had to fall into line with the other European Union countries.

Businesses in the UK often complain about the red tape imposed on them by Europe, but the *UK Members of the European Parliament* (MEPs) have the chance to debate new legislation before it becomes law. It's up to the UK Government to interpret that legislation and put it into practice.

The European Commission comes up with the new laws. The European Parliament consists of all the MEPs and advises on those proposals. The Council of Ministers represents all the governments of the 25 member countries and has the final say on what becomes law. The European Courts of Justice interpret the law in the same way that UK judges interpret UK laws.

Europe can pass a range of different laws. *Regulations* have to be followed to the letter by all member countries. *Directives* have to be achieved, but it's up to each country how they're implemented. The decisions of the Courts of Justice affect how the law is put into practice.

Bylaws

Bylaws are laws made by local authorities, and they apply to certain limited geographical areas. Bylaws usually cover issues that are of concern to local

people and about which no laws already exist. If you check with your local authority, you may find that it has laws about riding horses in the local parks or restricting the hours that children can work. Before bylaws come into force, the Secretary of State, on behalf of the Government, must pass them.

Understanding How the Courts Work

The job of the courts and all the people who work in them is to make sense of the law and to penalise people for breaking it. The four sorts of courts are civil courts, criminal courts, tribunals, other courts, such as the Coroner's Court and the European Court of Human Rights.

The system is far from easy to understand, partly because some courts can deal with both criminal and civil matters. Sometimes you can choose which court you'd like to hear your case or the different Acts of Parliament you can use to make a claim.

If you're about to get involved with the court system in any capacity, take advice. You may not need to enlist the help of a solicitor, but do talk to your nearest Citizens Advice Bureau or Law Centre for free advice and assistance. (You can find their details in the phone book.) These organisations may be able to supply all the information you need, but if they can't, they can point you in the right direction. If you do need to employ a legal professional, these groups can provide referrals as well.

The criminal courts

If the police charge you with committing a criminal offence in England and Wales, the *Crown Prosecution Service* (CPS), a Government department, decides whether you should be prosecuted. (In Scotland, the Crown Office and the Procurator Fiscal play the role of the CPS.)

The police often complain that they do all the legwork on a case, and then the CPS decides not to prosecute. When that happens, it's usually because the CPS feels that it doesn't have enough evidence to obtain a conviction. In some cases, the police themselves carry out prosecutions, and in the case of tax fraud, Her Majesty's Revenue and Customs will prosecute.

If the CPS gives the go ahead to prosecute you, it prepares a case against you and presents it in court.

All criminal cases start in the Magistrates' Court. The less serious or summary offences, such as shoplifting or illegal parking, start and finish there. More serious offences, such as burglary or assault, can be tried in the Magistrates' Court or sent to a higher court – the Crown Court – to be tried by a jury. The Magistrates will decide whether a case goes to the Crown Court, and they may send it there if they feel that a jury trial would be more appropriate or that they can't hand out a severe enough punishment. The Crown Court tries by jury all the most serious offences, such as manslaughter and murder, rape, and arson.

The Crown Court also deals with appeals against decisions made in the Magistrates' Court. The Court of Appeal Criminal Division deals with Appeals against Crown Court decisions. The House of Lords sits at the top of the tree and is the last resort for an appeal.

In Scotland, the Lord Advocate brings all the prosecutions, and the Advocate Depute prosecutes. The least serious summary cases, such as drunkenness charges and petty theft, are dealt with in *District Courts*, located in each local authority area. *Sheriffs Courts* deal with more serious offences. If they feel they can't hand out tough enough penalties, they can hand the case on to the High Court to be heard in front of a jury. The High Court also deals with the most serious cases – the *Solemn* cases. The High Court is the highest court of appeal for criminal cases in Scotland.

Northern Ireland has the same system of Magistrates' and Crown Courts as England and Wales. The main difference in criminal law in Northern Ireland is in the handling of cases relating to terrorism.

The civil courts

If you want to take a case against someone – to claim compensation for poor building work or for personal injury, for example – it's considered a *civil case*. Individuals, companies, and public organisations can take civil cases, which are usually heard by a circuit or a district judge without a jury. Most cases are dealt with by the County Courts, but some cases are handled by Magistrates in the Magistrates' Courts. The more complex cases go to the High Court.

The operations of the civil courts are as follows:

- ✓ **Magistrates' Courts** deal with arrears of council tax, income tax, and VAT, which are not criminal offences. The *Family Proceedings Courts*, which are part of the Magistrates Courts, deal with family matters, such as maintenance payments, adoptions, and care proceedings and orders to get a spouse out of the family home (see Chapter 6).

- ✓ **County Courts** deal with the majority of civil cases, such as disputes between landlord and tenant (see Chapter 3), faulty goods and services (see Chapters 13 and 14), personal injuries, domestic violence (see Chapter 6), debt (see Chapter 15), discrimination, and some employment cases (see Chapter 9). If the county court has divorce jurisdiction, it can deal with undefended divorce cases (see Chapter 6). If you want to claim a sum of money from someone and it's under £5,000, you can use the *Small Claims Track* at the County Court (see 'Making a small claim' later in this chapter). Sheriffs Courts in Scotland are roughly the equivalent of County Courts and deal with both civil and criminal matters.
- ✓ **High Courts** have three divisions. *The Family Division* deals with family issues, such as defended divorces (see Chapter 6), adoption, and domestic violence. *The Queen's Bench Division* deals with large claims for compensation, libel, and slander. *The Chancery Division* deals with wills, trusts, bankruptcy, and winding up companies.

Some cases, such as domestic violence, can be dealt with by more than one court. The Magistrates' Court can give an order to get a spouse out of the family home, but the County and High courts also deal with domestic violence. You do need to take legal advice about which court to start a case in and under which laws you should take your case.

The *Court of Appeal Civil Division* deals with appeals against decisions made in civil cases in the High Court, County Court, and Employment Appeal Tribunals. (See the upcoming section 'Using a Tribunal to Get Justice.') The House of Lords handles appeals from the Court of Appeal and sometimes from the High Court.

The system in Scotland is very different. The Sheriff's court can deal with civil as well as criminal cases. The *Court of Session* is the equivalent of the High Court in the rest of the UK. Its *Outer House* hears the less complicated cases, while the *Inner House* deals with the more complex cases and appeals from Outer House cases. The House of Lords appeals from the Court of Session.

In Northern Ireland, the system is very similar to that in England and Wales. The County Courts are presided over by County Court judges or recorders and deal with the vast majority of civil cases. They also deal with appeals from the Magistrates' Courts. The High Court handles all divorces.

Tribunals

Tribunals are panels of specialists in particular areas of law who can make decisions on some disputes. For example, *employment tribunals* (see Chapter 9) handle most disputes between employees and their employers. Tribunals

are less formal than courts, and the people making the decisions can talk directly to both parties in the dispute.

Tribunals also handle land disputes – for example, disagreements about the value of land that's being bought under compulsory purchase orders. *Social Security Appeal Tribunals* deal with claims by people that they've been unfairly refused welfare benefits. The *Immigration Appeals Tribunals* handle immigration cases.

The rest

As well as the Criminal courts, the Civil courts, and the tribunals, many other courts sit in the UK or in Europe and have a role to play in the UK's judicial system:

- ✓ **Coroners' Courts:** Coroners deal with the circumstances surrounding a sudden death. They investigate deaths in prison, for example, deaths where the cause is unknown, and violent deaths, such as murder. Coroners can decide to hold an inquest into how someone died, and the coroner may even call a jury to decide on the cause of death. In Scotland, the Crown Office and the Procurator Fiscal play the role of the Coroners' Court. Strangely, the Coroners' Court also deals with buried treasure. If you find a treasure trove, the Coroner is the person who decides who it belongs to!
- ✓ **The Privy Council:** This court handles appeals for decisions made in civil and criminal cases in courts in the Isle of Man, the Channel Islands, the Colonies, and some independent Commonwealth countries.
- ✓ **The European Court of Human Rights:** This court applies to cases where human rights have been violated.
- ✓ **The Court of First Instance:** If you're in dispute about a decision made by a European Union institution and the decision affects you directly, this court hears your case. It also deals with competition law.
- ✓ **The European Court of Justice:** The Court of Justice has the final say. It makes sure European Union Law is adhered to by the member states, and it can overrule all other courts, including the House of Lords.

Knowing Who's Who: The Lawyers

All sorts of different legal titles pop up as you explore the legal system. The list of different people who may ultimately be involved in any case is long, and their different roles can be bewildering.

Dealing with young people

The *Youth Court* deals with young people between the ages of 10 to 17 who have committed criminal offences. Children under 10 aren't old enough to be charged with criminal offences. The Youth Court is part of the Magistrates' Court. The young person can be sent in to the Crown Court for trial if the offence is very serious.

The County or High Court handles matters concerning children during a divorce. If a local authority is taking a child into care, it usually applies to the Family Proceedings Court, which is part of the Magistrates' Court (see Chapter 7).

In Scotland, *Children's Hearings* deal with young offenders who are under 16, as well as cases that relate to care and protection. The Procurator Fiscal can decide whether the case is serious enough to go to the criminal court. A Children's Hearing panel can order a child be taken into care or foster care, take part in a particular programme, have regular contact with a social worker, and appoint a representative to attend the hearing with the child to protect his rights.

Magistrates

Magistrates hear criminal and some civil and family cases in Magistrates' Courts. The official name for a Magistrate is a Justice of the Peace. In Scotland, Sheriffs, Magistrates, and Justices of the Peace can hear summary criminal cases. In Northern Ireland, some Justices of the Peace aren't Magistrates and don't have the power to hear legal cases.

The majority of Magistrates aren't qualified lawyers; they're lay people who have been appointed by the Secretary of State for Constitutional Affairs and the Lord Chancellor. Local Advisory Committees are made up of Magistrates and local people who advise on the appointments. Most Magistrates are between the ages of 27 and 65, and they must retire at 70.



You won't be appointed if you aren't of good character and personal standing or if you're bankrupt, a member of the armed forces or police, a traffic warden, or closely related to someone who is already a Magistrate.

Lay Magistrates are unpaid. Because they aren't legally qualified, Lay Magistrates sit in panels of three and have a qualified court clerk in attendance to advise them on various aspects of the law and procedure.

Stipendiary Magistrates are paid and are legally qualified, usually as solicitors. They can try cases alone and have the same powers as two lay magistrates.

Solicitors

A solicitor is likely to be the first legal professional you encounter if you intend to take a legal case through the civil courts, get a divorce, buy or sell a property, check out your rights if you're involved in some sort of legal dispute, or you're charged with a criminal offence. You can get legal advice from other sources – for example, an accountant can advise you on tax law, and Citizens Advice Bureaux or Law Centres have staff that can give you all sorts of information about your legal rights. Trade unions and other organisations, such as money advice or housing advice centres, can also help. You may have a suitable mediation service in your area that can help you resolve your dispute without the help of a solicitor. Or you may have an Ombudsman's scheme, such as the ones mentioned in the upcoming section 'Using Alternatives to the Courts.' You may even be able to present your own case in court. Explore all the options before appointing a solicitor to act for you.

Solicitors can advise you on your rights and the possible outcomes of your case, as well as help you prepare a case. They can represent you and try to reach a settlement without the case reaching court.



You should only hire the services of a solicitor who has experience in the area of law you're involved in. You can get details from the CAB, Law Centre, or the Law Society. (See the end of this chapter for contact details.)

If you're at a police station, a duty solicitor is available to advise you. Take that advice. If you're at a Magistrates' court, similar arrangements for legal advice are available; ask the court staff.



Solicitors can sometimes bamboozle you with their legal jargon. If you can, take someone else with you to an appointment with your solicitor. It may be easier for someone who's not as close to the issue as you are to take notes and ask pertinent questions. If the solicitor says anything you don't understand, make sure that you ask for explanation.

If you have complaints about your solicitor or the size of the bill, or if you can't afford their services, you can complain or obtain financial help. (See the section 'Claiming Help with Legal Costs,' later in this chapter, for more information.)

Barristers

Solicitors try to sort out your legal problems themselves, but if your case has to go to court, you're likely to need a barrister to represent you. You may be able to represent yourself if the case is uncomplicated, such as a small claim

in the County Court (see the upcoming section “Taking a Case through the Civil Courts”) or a tribunal hearing, but if you’re charged with a criminal offence or you need someone to argue your case in a civil court, it will usually be a barrister who is appointed. In most cases, solicitors don’t have the right to act as your advocate in court.

In Scotland, the person who does the same job as the Barrister is called an Advocate.

QCs

Queen’s Counsel (QCs) are senior barristers appointed by the Lord Chancellor as counsel to the Queen. They don’t have any extra duties in court, but they’re more experienced than normal barristers and solicitors, so their fees are likely to be higher.

Judges

A judge is a highly trained legal professional who is appointed to hear cases in a court of law. Different types of judge hear and try both civil and criminal cases. The *Law Lords* are the most senior judges and make decisions on appeals to the House of Lords. The *Lord Chancellor* is the most senior of the lot.

Court of Appeal judges come next in the pecking order and preside over Court of Appeal hearings. *High Court judges* hear civil cases in the High Court and try serious criminal cases in the Crown Court. *Masters* and *Registrars* deal with most of the ordinary cases in the High Court.

Circuit judges hear County Court civil cases and try less serious criminal cases. *Recorders* are part-time barristers and solicitors with at least ten years experience who deal with Crown and County Court cases. *District judges* deal with smaller County Court hearings and family matters and are usually solicitors.

Depending on the court she’s presiding over, the judge may be joined by another judge or a jury (see next section) or sit on her own. A judge is there to apply the law, and in some cases, the outcome of the trial may set legal precedents that must be followed by other legal professionals.

In Scotland, the Sheriffs’ Courts are the workhorses of the legal system and the judges are called *sheriffs*. They can hear and try a wide range of civil and criminal cases. The most senior judges are called *Sheriff Principals*.

Jury

A judge with a *jury* hears some cases. In Scotland, 15 people sit on a jury, while in the rest of the UK, that number is 12.

If your name is on the electoral register, you may be selected for jury service. You don't need to have any legal training. If you're selected, you may be excused only in exceptional circumstances, but you may be able to have your jury duty deferred until a later date.



Your work commitments won't get you off the hook. You'll be expected to sit on a jury for ten working days and may be involved in more than one case in that time.

You can claim some expenses while you're on the jury – for travelling, childcare costs, some financial losses, and a subsistence allowance to keep you alive for those ten days. You can get more information on jury duty from the Jury Central Summoning Bureau (0845 3555567 or www.juror.cjsonline.org).

Dealing with Crime

As far as the law is concerned, a crime is a crime whether it's a parking offence or a murder; the only difference is in the punishment of the offender. However, an underlying principle implies that it's better that a few guilty people get off than one innocent person be punished for something he didn't do. The following guidelines help uphold that principle:

- ✓ If you're charged with an offence, you're presumed innocent until proven guilty.
- ✓ The prosecution has to prove 'beyond all reasonable doubt' that you committed the offence. If reasonable doubt exists, you go free.
- ✓ You don't have to 'help the police with their enquiries' or give them a statement, and you can remain silent. If you don't cooperate, it can't be held against you at the trial unless the circumstances are exceptional.
- ✓ Any previous convictions aren't revealed to the jury during a trial unless they're relevant to that trial – for example, someone on trial for child sex offences may have previous child sex offences revealed.
- ✓ *Hearsay* – something heard from someone else – isn't accepted as evidence – witnesses have to report what they saw and heard for themselves.
- ✓ The press and media can't speculate on cases that are going through the courts. They can report only the facts.

You can end up in court because you're sent a summons to appear, or you can be arrested and charged. The more serious the impact the case could have on your life, the more important it is to get legal advice. If you may lose your driving licence, for example, and you make your living as a driver, you really should get legal advice straight away. If you may be sent to prison or are likely to lose your job, you need all the help you can get.

Police powers

The police can stop you in the street and ask you to accompany them to the station. You can refuse. You don't have to help them with their enquiries, but most people do.

However, the police can make you go with them if they arrest you. In addition, the police can stop and search you if they have reasonable grounds to believe that you're carrying certain items, such as knives or other weapons that can be used to commit an offence.

The police can arrest you with a warrant signed by a Magistrate, but they have wide powers of arrest in serious cases so they often don't need warrants. They can arrest you without a warrant if you have committed an *arrestable offence*, are in the act of committing an arrestable offence, or are suspected of committing an arrestable offence. An arrestable offence is one that can result in a prison sentence of five years or more – such as arson, burglary, death by reckless driving, manslaughter, murder, or rape.

The police can also arrest you without a warrant in all sorts of circumstances relating to breaches of the peace and drunkenness. If you're arrested, the police have powers to search you. You do have to be told that you're being arrested and why. If you're held at a police station, you have to be allowed to see a solicitor. You also have the right to have someone told that you've been arrested, and you can look at the codes of practice the police have to follow. The custody officer has to give you a written notice of those rights and should also caution you that 'you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.'



You can't be made to answer police questions, and they can't use force to get the answers out of you. You can't be forced to give a statement.

A solicitor is on duty 24 hours a day to help anyone who is detained at a police station. Before you decide whether to answer a question or give a statement, make sure that you see that solicitor for advice. However, in serious cases, the police can delay your interview with a solicitor if they think it

will interfere with the evidence, alert other suspects, or make recovering stolen property more difficult.



You have to be charged or released within 24 hours of your arrest. In serious cases, you can be held for up to 36 hours, and the police can ask Magistrates for an extension up to 96 hours. The police have a wide range of powers to take fingerprints, photographs, and DNA samples. Records of fingerprints and photographs don't have to be destroyed if you're acquitted and can be placed in a database to be used in crime investigations.

If you're arrested and charged, you can be kept in custody or allowed out on bail. In legal jargon, you're *remanded in custody* or *remanded on bail*. The police can grant you bail, or, if they refuse, you can apply to a Magistrate for bail. You shouldn't be refused bail unnecessarily. If the Magistrate does refuse, you have to be given the reasons in writing, and you go to prison as a *remand prisoner*. The time spent in prison on remand counts toward any eventual prison sentence the court passes.

Crime and punishment

Whether you're summoned or arrested and charged, your case starts in the Magistrates' Court – unless you're in Scotland, in which case the court system is different. (See the section 'Understanding How the Courts Work,' earlier in this chapter.) Some cases – the least serious, or *summary offences* – can be tried only in the Magistrates' Court. Other, more serious offences – known as *triable either way offences* – can be tried in either the Crown Court or the Magistrates' Court. The most serious cases – *indictable offences* – are transferred to the Crown Court.

If the offence can be tried only in the Magistrates' Court, the prosecutor – usually the Crown Prosecution Service – must inform the Magistrates and ask for a summons to be issued within six months of the offence being committed. If the Magistrates aren't informed within six months, you usually can't be prosecuted, but as with every rule, there are exceptions, particularly in the case of motoring offences.

If an offence can be tried in either the Magistrates' Court or the Crown court, you may be charged with an offence you committed years ago.

After it has been decided which court will try the case, you receive a hearing date and are eventually found guilty and sentenced, or acquitted. You may be able to plead guilty by post if the offence is a summary one, such as a minor motoring offence, that doesn't carry a maximum sentence of more than three months in prison. You can't plead 'not guilty' by post – you have to appear in court.



Private individuals can also bring prosecutions in the criminal courts. For example some shop owners prosecute shoplifting cases themselves rather than resorting to the Crown Prosecution Service.

If you're thinking of prosecuting someone for a criminal offence, take legal advice. You may end up paying all the legal costs and facing a claim for compensation if the case goes against you.

If you're found guilty, the court sentences you. Penalties range from suspended sentences and *community service orders* (where you do community work for a prescribed number of hours) to large fines and periods in prison or both. Maximum sentences also exist for each offence, and a solicitor can tell you what sentence you may be facing.

Criminal records

If you're convicted of a crime, you'll have a criminal record until the sentence becomes *spent* under the terms of the Rehabilitation of Offenders Act 1974. After the sentence is spent, you're considered rehabilitated, and you no longer have to reveal the conviction on forms. The length of time it takes for a sentence to become spent depends on the sentence itself. The time starts ticking as soon as you're convicted.

To give you a few examples (for adult offenders who are 18 and over):

- ✓ If you're sentenced to prison for more than 30 months, the sentence will never be spent. It's the length of the original sentence that counts and not the time you spend in prison.
- ✓ If you go to prison for between 6 months and 30 months, it will take ten years before the sentence is spent.
- ✓ If you get a community service order, the sentence is spent in five years.
- ✓ If you're given an *absolute discharge* (you may be guilty of the offence, but the court feels it wouldn't be fair to punish you), it takes six months before the slate is wiped clean again.

Committing another offence while you're waiting for the first sentence to be spent may extend the time it takes for you to be rehabilitated. After the sentence is spent and you've been rehabilitated, it will be as if you had not been charged and convicted. In most circumstances, you won't have to reveal that you have a spent conviction. However, exceptions abound.



Members of certain professions always have to reveal spent convictions: doctors, dentists, lawyers, accountants, teachers, probation officers, prison officers, vets, traffic wardens, and those working with children and vulnerable adults. Discuss your own particular case with your solicitor.

The Rehabilitation of Offenders Act 1974 doesn't apply outside the UK, so you always have to reveal details when applying for jobs or visas in foreign countries.

Prisoners' rights

If you're sent to prison, your rights – and any restrictions of those rights – are covered by the *Prison Act 1952* and *Prison Rules 1999*. You have the right to access your solicitor, food, clothes, exercise, at least two visits a month, to send and receive at least one letter a week, and to a fair hearing if a disciplinary problem occurs. If work is available, you have to work up to ten hours a day unless you're excused on medical grounds. The Prison Medical Service provides medical and dental treatment.

When you go to prison, you're categorised as an A,B,C, or D prisoner. Category A prisoners are the highest risk and have extra security restrictions. Category D prisoners are the least risk. Categories can be reviewed and changed.



You don't have the right to choose the prison you go to, but you may be able to apply for a transfer if your location poses your family big problems – for example, your parents can't travel to visit you because of age or disability.

Checking criminal records

The Criminal Records Bureau (CRB) keeps a database of all convictions, cautions, and warnings, spent and unspent. Employers taking on employees and volunteers to work with children and vulnerable adults must check criminal records with the CRB. A standard disclosure from CRB reveals to the employer the applicant's spent and unspent convictions and any police cautions or reprimands. If no criminal record exists, the Bureau will say so.

If the job means regular contact with children and being in sole charge of them, an enhanced disclosure provides the same details as the standard disclosure, but also adds any information from local police records, such as allegations made to the police by other people even if those weren't followed up. The disclosures appear if someone is banned from working with children.

You can be segregated from the other prisoners if you request it for your “own protection or if the prison authorities think it’s advisable because you’re causing bad behaviour and poor discipline. You can’t be segregated for more than three days without the authority of the Board of Visitors or the Secretary of State.

Women prisoners may be allowed to keep their babies with them up to 9- or 18-months-old, depending on which prison they’re in. That limit may be stretched in some circumstances. Women prisoners don’t have to wear prison uniform.

Remand prisoners who haven’t been convicted have more rights than convicted prisoners. They don’t have to work unless they want to; they’re allowed to wear their own clothes and are allowed as many visits as they like on at least three days a week and are allowed a weekend visit at least once every two weeks. They can also send and receive as many letters as they like. They can also use the Prison Medical Service or be treated by their own doctor or dentist.

Young people in young offender’s institutions are subject to similar rules to adults. If they’re under 17, they are given at least 15 hours of education or training each week.

Victims of crime

The victims of crime have long complained that the law is on the side of the perpetrators and that their views aren’t considered. Things are changing, and the courts do now have a responsibility under the Human Rights Act 1998 to make sure that the rights of the victims of crime are balanced with the rights of defendants. If you’ve been the victim of a crime and you report it to the police, you should receive a leaflet that explains your rights. In addition, your local Victim Support Scheme offers support and advice and can help you through the emotional and practical aspects of crime. You can contact them direct if you haven’t yet decided to report a crime. Call 0845 3030900 for details on your local branch.

If you’re a witness in court, you should be sent a leaflet that explains the court process. In addition, Victim Support provides a witness service in all Crown Courts to help you through the process.

You will have no say in the sentence that is handed down to the accused, but if the accused is convicted and appeals against that conviction, you have the right to be informed. If the offence was a serious sexual or violent assault, probation services also have to tell you when the defendant is released. If

you're being subjected to intimidation, you must tell the police. The Criminal Justice and Public Order Act 1994 makes intimidation an offense, and several other acts, including the Family Law Act 1996, give you additional protection from harassment.

The Criminal Injuries Compensation Scheme

If you're injured as a result of a crime, in theory, you can sue the person who injured you for compensation, but he probably wouldn't be able to pay. The Criminal Injuries Compensation Act 1995 set up the Criminal Injuries Compensation Scheme. The scheme has more than 400 different classes of injury and pays out small amounts (at least compared to the compensation payments people can claim in the civil courts) to victims.

The minimum award under the scheme is £1,000. If you don't qualify for at least £1,000, you get nothing. Tariffs exist on each class of injury. A sprained wrist that disables you for more than 13 weeks is worth £2,500, a loss of an ear £11,000, and permanent and extreme brain damage is awarded £250,000 (but compensation for loss of earnings and special expenses can bring a total award up to a maximum of £500,000).



Any award you get from the scheme may be reduced if you didn't report the crime to the police straight away, you didn't cooperate with the police, you have a previous criminal conviction yourself even though it's completely unrelated to the incident you're claiming for, or you're judged to have contributed in some way to your own injury.

You must normally claim within two years of the incident. You claim from the Criminal Injuries Compensation Authority at Tay House, 300 Bath Street, Glasgow G2 4LN – 0800 3583601, www.cica.gov.uk.

Taking a Case through the Civil Courts

Civil cases are cases brought by someone who wants a judge to decide that another person is in the wrong. Many civil cases are accompanied by a claim for a sum of money in compensation for that wrong. For example, you may have bought faulty goods and are unable to get the retailer to return your money. Or you may have been injured as a result of an accident and want compensation. The earlier section 'Understanding How the Courts Work'

describes how the civil court system works – civil cases go through the County or High Courts or their equivalents in Scotland.

Taking a case to court can be time consuming and expensive. Small claim cases are easier to deal with than the more complex cases, but you do have to think your decision through before proceeding.

Make sure that you really have a claim in the first instance. If you've bought faulty goods from a retailer, you do have a claim, but if you've bought it from a private individual, you usually aren't able to claim. Make sure that you can find the person you want to claim from and that he is able to pay you if you do prove that you're owed money and awarded compensation. In addition, different time limits apply to different types of cases, so check that you aren't too late to sue.

You may be able to take your own case to court if you're claiming for less than £5,000, but if you decide you need the help of a solicitor, it can prove expensive. Talk the case over with the Citizens Advice Bureau or Law Centre before you decide to go ahead. If you need the help of a solicitor, these organisations can give you details of suitable ones. Bear in mind that a mediation service may be available to resolve your particular dispute through a trade association or an Ombudsman's scheme. (See the section 'Using alternatives to the courts,' later in this chapter).

Making a small claim

If you're claiming less than £15,000, your case must be started in the County Court. If you're claiming less than £5,000 from a person or a company (£1,000 or less for personal injury), you can usually use the Small Claims Track of the County Court. It's a quick and informal way of settling a dispute perhaps with a builder over work not done and for which you want your money back. You don't have to use a solicitor, and the costs are kept to a minimum. However, even if you're using the Small Claims Track and the case is fairly straightforward, get advice from the Citizens Advice Bureau or Law Centre before you apply to the court. If the case is more complicated, even though the claim is less than £5,000, the judge may transfer it to another track.

You start your claim by filling in the claim form. Copies of the claim are sent to the defendant, who has a limited time in which to reply. If no reply comes, you can ask the court to go ahead and pass judgment in the defendant's absence. If the defendant does reply, he or she may accept your claim and make you an offer to pay in a lump sum or in instalments. You can accept and go back to the court for an enforcement order if the defendant doesn't stick to the agreement. If the defendant doesn't accept, a date is allocated for the hearing.

After the judge has heard all the evidence and that of any witnesses or experts, she decides whether you have a claim and how much you should be paid. If the defendant doesn't pay, you can then apply to the court for some type of enforcement order (see Chapter 15).

You have to pay the court fees, which are dependent on how much you're claiming and the expenses of any witnesses and experts. If the defendant is an individual who defends your claim for a fixed amount of money, he may be able to have the case transferred to his own local County Court, in which case you incur travel costs. However, if you win, the judge may order the defendant to pay all or part of your costs.

Claiming larger compensation

If you're claiming compensation for more than £5,000 or more than £1,000 in a personal injury case or the case isn't quite straightforward, you may have to use a different track of the County Court or claim in the High Court. The kinds of cases that are dealt with in the High Court are often high-profile claims against city finance firms for sex discrimination or harassment or serious personal injury through an accident. In these kinds of cases, the claimant isn't asking for a set amount of money, but has gone to court with an idea of how much she might settle for and is asking the judge not only to decide whether she has a valid legal claim but also to decide how much compensation should be paid.

If you're involved in a case of this sort, you must take good legal advice from solicitors and barristers who are experienced in the relevant areas of law.

Claiming for personal injury

If the injury is the result of a crime, take a look at the earlier section on criminal injuries compensation. If you know who caused your personal injury, you can make a claim through the civil courts. You will need the advice of a solicitor experienced at dealing with personal injury claims.

Strict time limits exist, and solicitors usually take on these kinds of cases on conditional fee agreements – where you pay the legal fees from any compensation you're awarded. If you lose, you don't have to pay the fees for your own solicitor, but you may have to pay the costs run up by the other side. You should take out insurance against that eventuality. These cases are sometimes called *no-win no-fee agreements*, but as you can see, that description isn't accurate, given that you may have the other side's costs to pay.

Claims assessors offer to get compensation in personal injury cases. Claims assessors usually offer to deal with your case on a no-win no-fee basis, but they expect you to pay them a percentage of any award they get for you. If you do decide to use a risk assessor, make sure that you find one who is experienced in your kind of case. If not a solicitor, he won't be able to take your claim through the courts, but will rely on reaching a settlement with the other side without taking legal action. Many claims for compensation are settled out of court before the case is ever heard, or at some point in the process, when it becomes apparent to the defendant that they're going to have to pay up.



Be wary of refusing a proposed settlement figure. You may be awarded less by the judge. Always discuss the implications of any offer with your solicitor.

Using a tribunal to get justice

Tribunals are less formal than courts and can resolve all sorts of issues. *Tribunals* are usually a panel of three people with experience relevant to the types of cases they're dealing with. The idea is that you bring your own case to tribunal and do without the services of a solicitor. Ideally, tribunals should be informal and much less intimidating than the formal courts. However, in practice, that scenario isn't always the case.



The percentage of cases won by people who have no representation is low. You have a better chance of winning your case if you have someone at the tribunal with you. Talk to your local Citizens Advice Bureau or Law Centre before you start tribunal proceedings.

As with any claim through any part of the court system, what you write on your initial claim form is important. You must adhere to strict time limits to make particular claims.

Using Alternatives to the Courts

Using the courts and the legal system to resolve a dispute should always be the last resort. If you can't come to an acceptable agreement with the other side in the dispute, look at other options such as the following before you take court action:

- ✓ **Ombudsmen:** Ombudsmen's schemes can help you resolve some disputes without the need to get involved in court action, and usually their services are free. Many ombudsmen's schemes exist, including the following:

- **Health Service Ombudsman** deals with complaints about GPs, dentists, opticians, nurses, and NHS Trusts.
- **Local Government Ombudsman** deals with complaints about local councils.
- **Pensions Ombudsman** deals with occupational and private pension schemes.
- **Financial Services Ombudsman** deals with complaints about banks, building societies, general insurance companies, and many other financial services.
- **Estate Agents Ombudsman** deals with complaints about estate agents.
- **Legal Services Ombudsman** deals with complaints against solicitors, barristers, and legal executives.

You must take all available steps to resolve your dispute with the organisation concerned before the Ombudsman's office will take it on. Some schemes offer mediation to help the two sides reach an agreement. In most cases, mediation precludes you from going to court. Check with the Citizens Advice Bureau whether a scheme covers your dispute and how to contact the relevant Ombudsman. Some schemes cover only England and Wales.

- ✓ **Mediation:** If no Ombudsman scheme can help with your particular issue, you may be able to use a private mediation scheme. If the person or company you have a dispute with is a member of a trade association, that association may offer mediation services to resolve disputes. (Chapter 6 has information on family mediation, and Citizens Advice Bureaux can advise you on any private services in your area.) Mediators help you and the other side in the dispute to reach an agreement that you can both accept and stick to without the need to go to court.

Mediation can be much less expensive than paying for a solicitor and court costs.



Claiming Help with Legal Costs

The *Legal Aid Fund* was set up to help people who otherwise wouldn't be able to afford the costs of taking a legal action or making a claim get access to justice. Only certain cases qualify for legal aid – for example, you can't get legal aid to help you if you're in debt or making a claim at an employment tribunal or claiming under £5,000 in the County Court. In some cases, you may qualify for help to pay for initial advice and assistance, but not for the case itself.

Strict guidelines also limit the amount of income and savings you can have and still qualify. In many cases where you're granted legal aid, the money must be reimbursed out of any settlement you get, or at a later date when you sell assets.



If you approach a solicitor about any legal matter, you should check out your eligibility for legal aid straight away.

If you don't qualify for financial help and can't afford to take a case, talk to the advice agencies about the help they can give you and think about mediation (see preceding section) as an alternative way to resolve a case without going to court. The organisations listed at the end of this chapter may be able to help.

Complaining about Professional Negligence

Just because you're dealing with the law, courts, police, and legal professions doesn't mean that those people are above the law or that they always follow the law or treat you fairly. If the government, local authorities, police, solicitors, or barristers break the law, they will be treated as anyone else. The government can be taken to court, for example, if it breaks the law, as can a local authority, the health service, or your next-door neighbour.

If you're unfairly treated by any of these people or organisations, you can complain and make a claim against those who've violated your rights. Sometimes you may be reluctant to press a complaint against the police or a lawyer because you're likely to feel intimidated or that you're bound to lose. However, you can go through accepted procedures because you aren't the first to complain, and the different organisations concerned recognise that unfair treatment does happen. You may find that you need the help of one member of the legal profession to make a claim against another. They won't all be happy to take you on as a client but persist. If you're in the right, you can find someone willing to help.

If you think you've been unfairly treated in any way by the police or legal professions, talk to your Citizens Advice Bureau or Law Centre about the right way to make a complaint.

Getting help and advice

Some organisations can help whatever the circumstances. The **Citizens Advice Bureau** is a good place to start. It may be able to help you resolve your problem, but if not, it can point you in the direction of someone who can. Look in your phone book for the details of the nearest bureau or find it online at www.adviceguide.org.uk.

You may also have a **Law Centre** in your area. Look in the phone book or contact the **Law Centres Federation** at 0207-387-8570 or at www.lawcentres.org.uk for details. You can reach the **Scottish Association of Law Centres** at 0141-440-2503 or www.govanlc.com/salc. **Law Centres Northern Ireland** on 02890-244-401 or www.lawcentreni.org.

In some areas of the UK, the mediation services are quite good. Ask your nearest Citizens Advice Bureau if a service in your area handles disputes. Try **Mediation UK** on (0117-904-6661 or www.mediationuk.org.uk).

You can find more information on the courts at www.hmcourts-service.gov.uk, and the **BBC** has a Web site that can help you make sense of the whole legal system at www.bbc.co.uk/crime/law/jargonbuster, which also has links to laws in Scotland and Northern Ireland.

The **Law Society** can give you lists of solicitors. Call 0870-606-6565 in England and Wales, 0845-113-0018 in Scotland, and 02890-231-614 in Northern Ireland. If you want to complain about a solicitor or a bill, talk to the Law Society on 0845-608-6565 or have a look at the Web site www.lawsociety.org.uk.

Other useful contacts include The **Association of Personal Injury Lawyers** (0115-958-0585 or www.apil.com); **Victim Support** (0845-303-0900 or www.victimsupport.org.uk); The **Independent Police Complaints Commission** (08453-002-002 or www.ipcc.gov.uk), The **Miscarriage of Justice Organisation** (0121-789-8443); and the **Prisoners' Advice Service** (0207-253-3323).