



Understanding Legal Action Against Businesses

Research with UK SMEs

Foreword

The American taste for litigation is spreading beyond its borders, nowhere more visibly than the UK. Not only does it harm big businesses, it harms the small businesses that are the backbone of our economy. This report quantifies that harm, and illustrates the experiences of small businesses as a consequence of litigation culture, drawing on new research by Fair Civil Justice, the campaign for a fair, transparent civil justice system for businesses, consumers and the public sector.

Small businesses account for 60% of jobs and half of turnover in the private sector, and they are often the heartbeat of a community. After a difficult couple of years, where small businesses have faced down everything from the pandemic to soaring energy prices, the last thing they need is to spend time fighting litigation.

The rising trend of litigation culture, which piles increased costs of doing business onto consumers, has been caused by several factors including legislative changes. It has been exacerbated by an influx of capital from third-party funders – financial services companies that invest in these cases for a share of the compensation, facilitating expensive cases that last for many years.

If we fail to tackle this issue here, we risk the environment becoming as litigious as that of the US, where SMEs bear 53% of the cost of litigation - around \$181 billion a year. This side of the pond, one [study](#) into the topic puts the equivalent figure at £11.6 billion for England and Wales. Given we have seen capital invested into litigation in the UK grow from £6 million in 2010 to £2.2 billion in 2021, the burden on SMEs will surely grow with it.

To shine a light on this issue, Fair Civil Justice (FCJ) commissioned quantitative and qualitative research to better understand legal actions against British SMEs and to inform recommendations that mitigate the risks to the courts, consumers and businesses from a US-style litigation culture. From the in-depth interviews conducted for this report, we know that SME decision-makers experience wide-ranging and often very severe impacts from legal action, which can be entirely

disproportionate to the purported wrongdoing. There is also a clear sense that the legal process is weighted against SMEs defending a claim, leading many to settle, and a lack of support and guidance for SMEs facing legal action for the first time.

As part of FCJ's work to protect British SMEs, consumers and the civil justice system, we are recommending safeguards to create greater transparency and accountability. This research demonstrates that a number of improvements to our civil justice system are required, including:

- Increased use of Alternative Dispute Resolution mechanisms like ombudsmen, so companies spend less time and money on legal services and more on growing their business.
- A requirement for litigants to demonstrate trying to reach a resolution before going to court, so there is less pressure on the legal system from small businesses threatened by litigation.
- More publicly available resources for SME decision makers to access support and understand their options when faced with the threat of legal action.

Litigation is an important part of the legal landscape, but we must ensure it is used proportionately and does not become the first port of call when disputes arise between businesses or with consumers.

Seema Kennedy OBE, Executive Director

Key figures



In total, **15%** of UK SMEs have faced legal action or the threat of it in the last five years - estimated to represent a total of around 120,000 businesses.



By contrast, only **8%** of SMEs have had proceedings initiated against them via an ombudsman and only **7%** have had an alternative dispute resolution (ADR) procedure brought against them in the past five years.



The vast majority (**90%**) of SMEs who have been subject to legal action or the threat of it claim to have experienced at least one impact – with notable impacts including pressure on employee capacity, reputational damage and a more risk-averse approach to business.



Meanwhile **41%** of SMEs who have not themselves been subject to legal action or the threat of it in the past five years nonetheless claim to have been impacted in some way (including **19%** who have faced increased insurance costs).



A majority of SMEs (**62%**) have some form of complaint resolution mechanism in place already.



20% of SMEs subject to legal action or the threat of it say that the claim was in relation to an allegation of GDPR/ data breaches.

Introduction

This summary report aims to provide a high-level overview of the key findings from primary research conducted with UK businesses on the subject of civil litigation. The research was conducted by Global Counsel on behalf of Fair Civil Justice.

The research sought to answer the following questions:

What is the scale and extent of legal action against businesses?

How do different businesses experience the process of litigation?

What is the impact of legal action against businesses?

Which changes to the system of civil litigation, if any, are sought by those affected?

While the research provides insight into the experiences of a wider range of businesses (including larger businesses), there is a particular focus in this report on the experiences of small to medium enterprises (SMEs). For ease, this report defines SMEs as businesses with between 1-249 employees and our survey excludes the very smallest businesses with annual turnover of less than £250,000.

As well as an overview of the key findings from the research, the report provides illustrative case studies of businesses that have been subject to legal action. These can be found in the Appendix.

Summary of findings

A significant minority of SMEs have faced legal action or the threat of it.

In total, 15% of UK SMEs have faced legal action or the threat of it in the last five years - estimated to represent a total of around 120,000 businesses. More specifically, in the last five years:

- 11% of SMEs have been contacted by a lawyer or law firm threatening to take legal action against it
- 8% of SMEs have settled legal action threatened against it before the case went to court
- 8% of SMEs have been subject to legal action in court and won the case
- 6% of SMEs have been subject to legal action in court and lost the case

Overall, around 1 in 5 (19%) of all UK businesses have faced legal action or the threat of it in the past five years. As demonstrated in Fig. 1, there is a clear correlation between the size of a business and how likely it is to have faced legal action or the threat of it – with larger businesses typically

most likely to face legal action. For example, fully 35% of businesses with 250-499 employees have faced legal action or the threat of it in the past five years.

Nevertheless, it is notable that a proportion of even the very smallest businesses have faced legal action – including 26% of SMEs with 50-99 employees and even 13% of SMEs with 10-49 employees.



We had to settle for something we didn't feel we had done. We'd been taken advantage of by someone who was playing the system. Someone tried to take us to a small claims court over one of our staff who had spilled red wine on a sofa in our rented accommodation. The onus was on us to prove it hadn't happened, which is impossible."

COO, Veterinary services provider

Fig. 1: Extent of legal action against UK businesses by size (no. of employees)

Size of business	Legal action threatened	Settled out of court	Won case in court	Lost case in court	Any legal action
All	14%	11%	9%	8%	19%
All SME	11%	8%	8%	6%	15%
1-9	2%	2%	2%	-	2%
10-49	10%	6%	5%	5%	13%
50-99	17%	14%	11%	12%	26%
100-249	23%	18%	19%	12%	28%
250-499	28%	21%	15%	16%	35%
500-999	27%	25%	25%	16%	41%
1000+	18%	17%	8%	11%	24%

Legal action can feel surprising and disproportionate.

Interviews with affected businesses suggest that legal action can often come as a surprise, with little prior engagement with the claimant, formal complaint or attempt at alternative means of resolving the issue in question.

This use of legal action as a first resort is reflected in the survey data: while 15% of SMEs have been subject to legal action or the threat of it, only 8% of SMEs have had proceedings initiated against them via an ombudsman and only 7% have experience of engaging in an alternative dispute resolution (ADR) procedure.

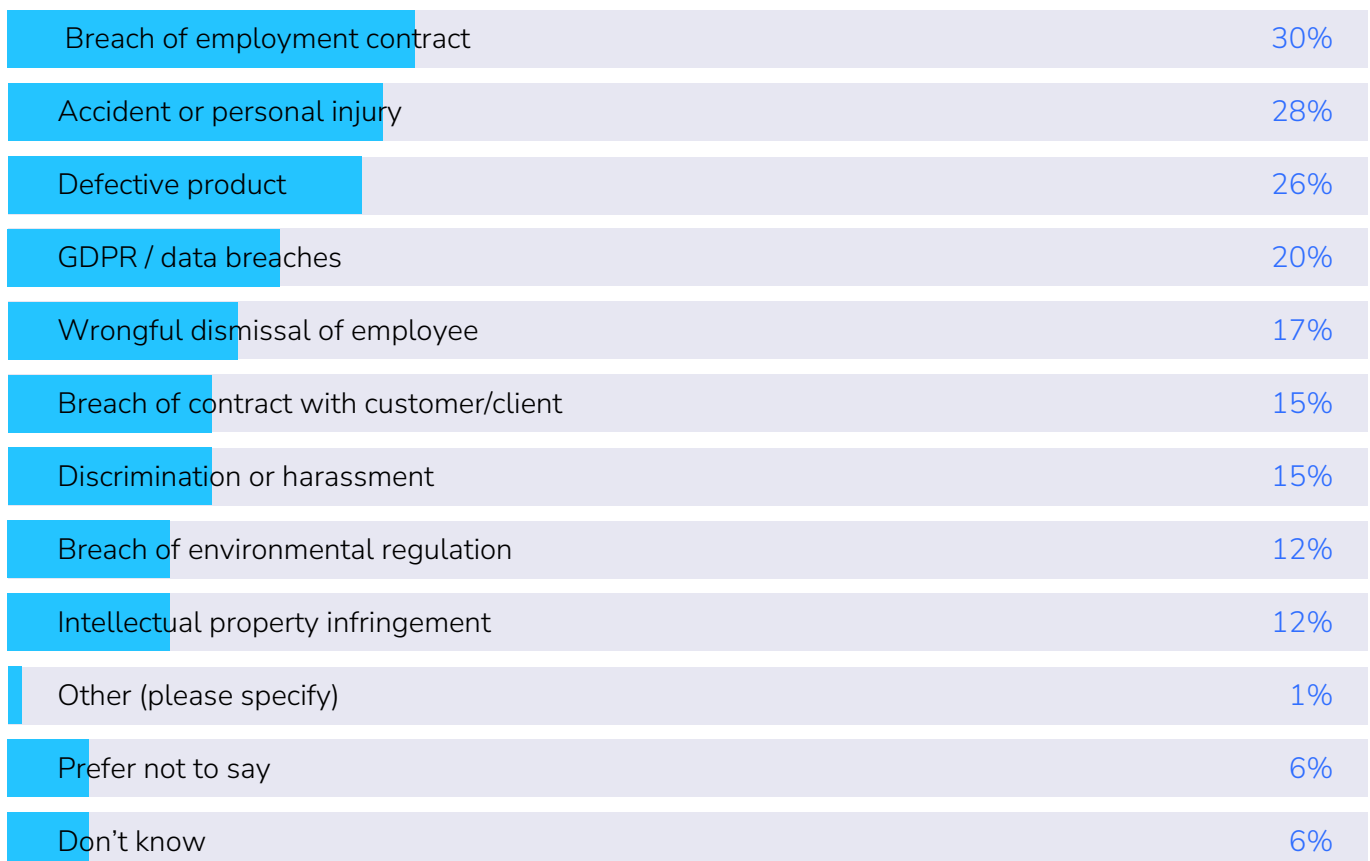
There is also evidence of a lack of formal communication further exacerbating this issue. In one instance, a business owner interviewed had been entirely unaware of legal proceedings having been initiated - due to pandemic restrictions

preventing them from accessing mail sent to the business address - until being notified of the court ruling.

Allegations can relate to a wide range of issues. As illustrated in Fig. 2, these range from breach of employment contract (30% of SMEs who had been subject to legal action citing this as a reason for it) and defective product (26%) to GDPR/data breaches (20%) and breach of environmental regulation (12%).

Fig. 2. Alleged reasons for legal action being taken against SMEs

% of UK SMEs who have been subject to legal action or threat of it selecting each issue



Affected businesses interviewed suggest that legal action can feel either disproportionate to the alleged wrongdoing or entirely spurious – as illustrated by the case studies in the Appendix. Nevertheless, the cost, time and stress associated with defending the claim in court can lead businesses to feel obliged to settle, irrespective of their confidence in their case.



The claimant was an extremely assertive CEO who thought we were a Mickey Mouse company down a track in [rural area]. They assumed that if they bullied us enough, we would fold and pay up. I was absolutely incensed.”

MD, Wholesale organic food trader

There are a wide range of both direct and indirect impacts resulting from legal action.

Overall, the vast majority (90%) of SMEs who have been subject to legal action or the threat of it claim to have experienced at least one impact. The full range of impacts can be seen in Fig. 3 and include increased insurance costs (experienced by 23% of SMEs subject to legal action or the threat of it), money spent on legal fees (25%) or compensation (13%) that could have been invested in the business and, ultimately, higher prices for customers (21%).

Fig. 3. Direct and indirect impacts of legal action on SMEs

% of UK SMEs having experienced each impact

Impact	SMEs subject to legal action or threat of it	SMEs not subject to legal action or threat of it
Pressure on employees' time or capacity	9%	27%
Increased costs due to investment in safety equipment or training	10%	26%
Legal costs (e.g. lawyers' fees) incurred as part of a specific case or claim	0%	25%
Increased insurance costs	19%	23%
Increased prices to customers/clients	20%	21%
Deterioration in mental health or wellbeing of employees	10%	19%
Deterioration in relationships with customers/clients, staff	6%	19%
Reputational damage to the business and/or employees	0%	19%
Increased costs due to hiring a permanent lawyer or legal counsel	5%	14%
Compensation or damages paid out as part of a specific case or claim	0%	13%
Less innovation or fewer creative risks taken	6%	12%
Reduction in employee numbers (e.g. through redundancies or hiring freeze)	8%	11%
Prefer not to say	1%	5%
None	49%	4%
Don't know	8%	1%

■ SMEs subject to legal action or threat of it

■ SMEs not subject to legal action or threat of it

Qualitative interviews with affected businesses add insight into the many other, non-pecuniary impacts evident in the survey data. These include:

- Pressure on employee capacity, with legal action causing significant distraction and time commitment (e.g. compiling evidence, trawling through emails, learning about legal process and requirements)
- Deteriorating mental health, with threat of legal action causing anxiety and stress both for leadership and other staff members
- Deterioration in reputation and relationships with customers, suppliers and in some instances staff members
- More cautious, less trusting and less risk-taking approach, both in terms of growing the business (e.g. hiring new staff or offering certain services) and in terms of internal culture and ways of working (e.g. more paperwork and process, reliance on spoken over written communication on sensitive topics)



The impact on the team can be quite painful and emotional, especially in smaller teams where everyone is involved and trying to be a hero. The increased workload is tough. I would much rather be picking my daughter up from nursery rather than trying to defend us against some stupid claim."

VP, Property technology company

Perhaps most surprisingly, around 4 in 10 (41%) SMEs who have not themselves been subject to legal action or the threat of it in the past five years nonetheless claim to have been impacted in some way. The most prominent of these indirect impacts are increased insurance costs and increased prices to customers (both experienced by around 1 in 5 SMEs not subject to legal action in the past five years).

Taken together, the overall impact of legal action on businesses varies significantly. Interviews with businesses subject to legal action suggest that it can range from being a significant inconvenience (albeit one that is 'priced in') to posing an existential risk to the business.

Factors that determine the severity of impact of legal action appear to include:

- The severity of the allegation
- The size of the business and its available resources
- How well-established and mature the business is (e.g. in-house legal counsel)
- Whether or not the business has experience of prior legal action (and existing processes in place)
- Access to support and advice from acquaintances or professional networks



Stress and loss of earnings were the biggest impacts. It knocked my confidence and impacted my long-term growth plans. I couldn't pay my staff that month or afford my bills. It could have been crippling for the business."

Founder, Accountancy firm

There is dissatisfaction with the litigation process and support for alternative resolution mechanisms.

Among those businesses interviewed who had experienced legal action, there was widespread dissatisfaction with the process and a sense that the system favoured complainants. A number of criticisms were made about their experience of the legal process:

- It is too easy for malicious or spurious claims to be brought against businesses
- The process feels tilted unfairly in favour of claimants
- The process is excessively lengthy, time-consuming and expensive
- Initial legal advice provided to businesses can be overly optimistic or even misleading, thereby encouraging litigation
- A lack of assistance and support provided to businesses trying to navigate the process



It feels like they throw a net over as many people as possible and hope that they catch something... It felt like the process was weighted against us."

COO, Veterinary services provider

Indeed, interviews with businesses who had been subject to legal action or the threat of it reveal strong support for alternative dispute resolution mechanisms as a first port of call. Indeed, the survey data indicates that the majority of SMEs (62%) have some form of complaint resolution mechanism in place already, including a formal in-house complaints procedure (36%), third-party dispute mediation service (12%) and prominent signposting to a relevant ombudsman (9%).



I think [ADR] has got to be the right way forward. One of the cornerstones should be, if it goes to court, did you try and resolve it amicably before taking it to court? That has to be the right approach."

MD, Wholesale organic food trader

In addition to greater use of alternative dispute resolution options in the first instance, businesses interviewed suggested a number of other improvements to the legal process based on their experiences. These included:

- Improved official communications (e.g. court letters)
- Better provision of guidance, advice and support
- Speedier, more efficient resolution of legal proceedings
- More reliable and realistic initial legal advice
- More affordable access to legal support



A lot of people seem to be trying things on or pulling wool over your eyes just because they can. There always seems to be a major lawsuit for something. People are more likely to claim than in the past. At the moment you have the diesel thing, before that it was PPI. Younger people especially grow up with that pushed in their face. It's a something for nothing kind of thing."

Head of IT, Property developer

Appendix: case studies

Founder, Accountancy firm

Small firm providing B2B accountancy services, including advice, tax returns and bookkeeping. Typical customers include sole traders and a variety of SMEs, including hairdressers, beauty salons and construction companies. Founded three years ago and employs three members of staff.

Accused of not filing a tax return for a customer they had last worked with two years prior. Only became aware of the case when a letter from court was received notifying of conviction – and assumed it was a scam initially. Spent a month trying to understand more about the case, what the alleged wrongdoing was and who it related to.

Spent 8-12 weeks trying to resolve the case, causing a significant loss of earnings due to use of staff capacity. Impact on short-term cash flow meant bills and wages weren't paid for a month. Founder lost confidence and decided against pursuing ambitious growth plans for the business. Much more cautious about taking on new customers and no longer provides a tax return service.

“

I lost confidence in my own business skills and ability to grow the business further. I put massive growth plans on the sideline as it felt too risky. We aimed to have 12-20 people in the business by now and only have 3. We had to pause developing staff, giving them bonuses and so on. It's also made me much more cautious, thinking twice about taking on new services and new clients.”

MD, Wholesale organic food trader

Small food business trading primarily wholesale but with occasional direct-to-consumer transactions. Established over 40 years ago. Employs 35-60 people throughout the year, depending on season.

Accused of supplying a customer with a contaminated product. First notified of the issue when receiving a large pack of legal documents. Suggested a mediation process but offer was refused. Engaged their insurers and product integrity lawyers to create a robust defence against the claim.

Short-term impacts included stress and significant diversion of senior resource away from day-to-day business activities. Legal fees have increased substantially as the company now routinely engages with lawyers (which has also made the business less nimble and increased time required to complete paperwork). More wary when working with new customers.

“

We were told by their CEO that, by the time they had finished with 'little companies like ours', we would be bust. It was made clear to us that the only way for us to survive was to settle.”

COO, Veterinary services provider

Provider of veterinary services across UK and NI employing around 1000 people. Company has been in existence for 29 years.

Experience of a range of different legal claims, including the accusation from a landlord that a company employee damaged a sofa in staff accommodation rented by the company. Tried to offer mediation, but it was refused by the claimant.

Short-term impacts included the time and effort involved, distracting senior leadership from core business activities. Involvement in multiple legal cases has cost the company both in legal fees and increased insurance premia, money which could have been invested into the business. The allegations have also led to longer-term reputational damage, risking key public sector contracts.



It feels like we are always the ones incurring costs and putting in the effort. It always feels like the process is in the favour of the other person."

VP, Property technology company

Provider of property management software to real estate companies. Customers are primarily asset owners, property owners, and operators who manage properties on behalf of owners. Founded eight years ago and growing quickly, both across the UK and globally.

Accused twice of breach of contract. On one occasion, the company decided it was less costly to engage with lawyers, and the claimant dropped the case after 3-4 months of correspondence. On the second occasion, the company was accused of wrongly terminating a contract at the onset of the pandemic. Letters and court summons were sent to an unmonitored post-box during the pandemic, resulting in a county court judgement against the business.

In the short term, workload for all employees was increased significantly. Both cases distracting and emotionally draining for senior members of staff. Customers who lost the case instead left negative reviews of the company, leading to reputational damage.



Legal action is a pure distraction. It isn't an existential problem, but it is a big nuisance. You may have to drop everything to deal with these disputes. When something is brewing, you are constantly aware that you may have to drop everything. It is exhausting."

Founder, Online fashion retailer

Online B2C fashion retailer selling designer and own-branded stocks. Products sold on their own website and Amazon. Business has been in existence for 15 years and employs fewer than 9 people.

Accused of selling stock on certain marketplaces without supplier consent. Received a letter from a third party which mentioned the potential of legal action. The retailer removed stock from the marketplace and the claimant dropped the case.

Main impacts were the shock of the threat of legal action and the time taken away from the business to manage the claim. The stock in dispute could no longer be sold.

“

It took a lot of time away from the business. The account was closed with the customer, and we weren't allowed to deal with them going forward... It was quite a big account, and a longer-term impact is the impact on sales and revenue going forward for the company.”

Head of IT/IS, Property developer

Property development company focusing on regeneration of deprived areas. Typically mixed-use commercial and residential properties, both selling and letting. Business is 30 years old, with around 90 staff.

Has faced legal action on a number of occasions, typically when tenants are perceived to be avoiding paying rent. One example was a tenant who rented a furnished property, did not pay rent and, when chased by the company, claimed that they had been told it was an unfurnished property.

Impacts of experiences of legal action include significant increases in legal insurance and solicitors' fees. The business has become more cautious in terms of design. Less trusting of relationships (inc. joint ventures) than they would have been otherwise. Significant time has been spent on data recovery exercises as part of legal challenges.

“

Some people genuinely have an issue and want to resolve it. They tend to get in touch and ask. People who want to dodge the rent will not communicate much beforehand.”

Methodology

The findings in this report are based on a two-stage research methodology: a representative quantitative survey of UK businesses to establish the extent of legal action against businesses, followed by in-depth qualitative interviews with SMEs to provide deeper understanding of its impact.

Representative survey

An online survey of 1,200 business owners and senior financial decision-makers was conducted using BVA BDRC's Business Opinion Omnibus. The sample was structured and weighted to be representative of UK businesses with a minimum annual turnover of £250,000. Within the overall sample, a total of 712 respondents represented SMEs (1-249 employees). Fieldwork was conducted between 2nd-18th May 2023.

This report includes estimates of the absolute number of businesses affected by legal action. These estimates are based on BVA BDRC data indicating that the total number of UK businesses was 5,583,000 and the total number of SMEs with annual turnover of over £250,000 was 801,000 in 2021. These estimates are crude and should be treated as indicative only.

Data tables from the survey are available on request.

In-depth interviews

In-depth qualitative interviews were conducted with six business owners and senior financial decision-makers that had been subject to some form of legal action in the past five years. Of these, five represented SMEs and one represented a larger business (250+ employees). Interviews were conducted online and lasted around 60 minutes each. Fieldwork was conducted between 11th July and 15th August 2023.

Interviews were conducted with decision-makers representing the following businesses:

- Veterinary services provider
- Online fashion retailer
- Property technology company
- Wholesale organic food trader
- Accountancy firm
- Property developer

Unless otherwise specified, figures and charts used in this report are derived from the survey, while verbatim quotes and case studies are derived from the in-depth interviews.



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