

GUIDANCE SHEET

The guidance provided does not cover Insolvency Law but further details can be provided on request.

ROLE OF THE COURTS – CIVIL PROCEDURE RULES 1998

The courts are proactive when dealing with cases and there is pressure placed upon those in a dispute to try and negotiate to achieve a settlement of the dispute without needing to involve the court. This has led to an increase in the use of Alternative Dispute Resolution (ADR). We would be pleased to advise on the suitability of ADR to any potential dispute.

Please do ask for our separate ADR guidance sheet.

In most straightforward debt recovery cases there is no dispute as to the amount outstanding; there is often little room for negotiation unless the claimant is prepared to accept payment of a lesser sum.

FIRST STEPS

You have tried to extract payment but to no avail. We will send a letter before action on your behalf. This will provide the debtor with seven days to pay the debt in full or face legal proceedings. The letter will specifically state that legal proceedings will affect the debtor's credit rating with the addition of court fees, costs and interest being added to the debt.

Legal proceedings cannot be commenced until this deadline has passed.

HOW ARE LEGAL PROCEEDINGS COMMENCED?

The aim of legal proceedings is to obtain judgment i.e. an order that the debtor will pay you the sum due. However, if the customer has no assets, legal proceedings are in effect irrelevant – unfortunately no method has yet been discovered for “drawing blood from a stone!”.

In the event that court proceedings are unavoidable, then matters are commenced by the claimant filing a Claim Form usually in the County Court.

Depending upon the amount in question there will be a court fee payable for filing a Claim Form. In addition to the amount in question it is possible to make a claim for interest.

LATE PAYMENT OF COMMERCIAL DEBTS (INTEREST) ACT 1998

Late payment of accounts is a perennial problem for UK businesses and can cause serious cash flow problems. This legislation gives businesses a statutory right to claim interest if another business pays it too late.

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WHO CAN CLAIM IT?

- Small businesses – with 50 or fewer employees.
- All businesses in the public sector.

When the payment is late a supplier should inform a purchaser that he is claiming interest pursuant to the Act and you should indicate the daily rate of interest that will be claim although it is not necessary to do so. If you telephone us we can tell you the current rate of interest allowed by the Court

PROCEDURE

Once the Claim Form has been filed at court a copy is sent to the Defendant. The Defendant has fourteen days from the date of service of the Claim Form to either admit the claim or file a defence.

At this stage there are a number of alternative ways in which the matter can proceed.

1. **The Defendant admits the claim**

If the Defendant admits the claim he may offer to pay the amount due by instalments. If the amount of these instalments cannot be agreed there will usually be a hearing before a District Judge to decide the appropriate level of these instalments.

2. **The Defendant does not reply to the claim**

An application for judgment in default can be made, so that an Order is made in the Claimant's favour.

3. **The Defendant files a Defence**

How the court deals with this will depend upon the amount in dispute. If the case is complex and there are a number of potential witnesses there may be several court hearings involved.

i. Small Claims Track

This is for claims of under £5,000.

These will be dealt with at an informal hearing before a District Judge – In most cases solicitors' costs are not recoverable and each party pay their own costs.

ii. Fast Track

Claims between £5,000 and £15,000.

At an early stage in the proceedings the court will set down a timetable which must be followed by the parties.

iii. Multi-Track

Cases in excess of £15,000 and for cases with particularly complexity or with a number of witnesses. In reality few cases in relation to debt recovery would be suitable for this track.

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ENFORCING THE JUDGMENT i.e. Turning the judgment into the money due to you.

You cannot bank a judgment and must enforce it to obtain payment.

EXAMINATION OF MEANS

This is an opportunity to see which method of enforcement may be suitable and can trap the judgment debtor as he will have to produce bank statements which are not easily forged.

Here the debtor attends the court and is asked questions regarding his income and outgoings. This is carried out at the County Court in the area where he lives and carries out his business and is used to find out what assets or liabilities he may have.

METHODS OF ENFORCEMENT

1. WARRANT OF EXECUTION

If the debtor has goods they can be seized and sold and the sale proceeds are then used to discharge the debt.

- A form is filed at court together with a fee. If the debtor then pays this will be the end of the matter.
- If not the Bailiff will visit the Defendant at the address provided and try and recover the money representing the debt or goods to be sold at auction to the value of the debt.
- The Bailiff can only use reasonable force in doing so and

can only take goods in the sole name of the debtor not joint names of any spouse or partner of the debtor. He cannot take goods that are on lease or hire purchase.

- If the debtor does not agree he can ask for the Warrant to be suspended and the matter will be heard by the District Judge.

2. ATTACHMENT OF EARNINGS

This is considered only if the debtor is in employment and cannot be used if the debtor is self-employed.

Sometimes the threat of proceeding down this route prompts payment due to the embarrassment of an employer discovering the debtor's situation.

The employer will make deductions out of the debtor's wages each week and send it to the court but not if the financial position of the debtor is assessed by the court as falling below subsistence levels. This means that if the debtor's outgoings are in excess of his income an attachment cannot be made.

3. THIRD PARTY DEBT ORDER – "THE BANK RAID"

If the debtor is owed money by other people it is possible to obtain an order that these people will pay the debt due directly to you. This order can be made in relation to the debtor's bank account hence the term the "Bank Raid".

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It is often useful if the debtor is self-employed because he may have various trade debts owing to him.

4. CHARGING ORDERS

This is a more long term means of enforcing judgment. Here the Court is asked for an order to charge the judgment against the debtor's land with the amount remaining unpaid under the judgment plus costs. Once the order is made you can then apply separately for the property to be sold and the debt be paid out of the sale proceeds.

It is probably one of the most effective methods of enforcement because the debtor will be most concerned at the prospect of having a Charge over this home/business and possibly losing that home or business. In many cases the order for sale will not go ahead. However if there is little or no equity in the property an alternative method of enforcement should be considered.

The procedure for this is as follows:-

- An affidavit is filed at Court with an up to date Search from HM Land Registry indicating ownership and whether any other Charges or mortgages are registered.
- If the District Judge is satisfied with the evidence he will make an interim Charging Order.
- The next stage is called the Final Charging Order and at this stage the debtor should show why the

Charge should not be made for example if facts or wrong or the amount is in dispute.

- If successful an entry is made at HM Land Registry against the property. This has the effect of you having a Charge rather like a mortgage over the property. Any mortgage or Charge dated prior to your entry obviously has priority in the event of a sale to the extent of the size of that mortgage or Charge.
- If the debtor discharges the amount due then the Charge will be removed from HM Land Registry. You should note that if the debtor owns land jointly with his or her spouse the order can only be attached to the debtor's interest in the property and not to that of his or her spouse.

If the debtor is in partnership a Charging Order can be obtained against his interest in any partnership property.

If there is no land to attach a Charge Order to and the debt is sufficiently large, a status search can be carried out to see if the debtor has any other form of security for example shares of government. And a Charging Order can be obtained against these and provide for interest and dividends to be paid on the shares.

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5. STATUTORY DEMAND

If you are owed £750 or more it is possible for you to serve a "Statutory Demand" for the money upon the debtor. Statutory Demands are usually taken very seriously and they are used as an effective way of persuading debtors to pay the debt. After 21 days you could petition for a Bankruptcy Order however this is not a step that should be taken lightly particularly as you are likely to be an Unsecured Creditor.

It is a tactic to put pressure upon the debtor to obtain either payment in full or an offer to pay by instalments.

We can provide further details regarding Statutory Demands upon request and also bankruptcy.

6. ENQUIRY AGENTS

Often further information regarding your debtor needs to be gathered. We can instruct an enquiry agent who are also known as "process servers" or "private investigators" who specialise in finding out very localised and specific information regarding the debtor through their own enquiries. They can make discreet enquiries about the debtor as to any aspect of the debtor's lifestyle and undertake searches and serve documents upon the debtor.

The information gathered may be very helpful in obtaining payment