

Frequently Asked Questions - Debt Collection

1. How do I get money I am owed by a customer? Why do I have to write to the customer first?

The letter before claim is an essential part to any proceedings and must set out in as much detail as possible the parties involved, the nature of the claim and the actions required. The purpose of the letter is to allow for the exchange of information and allow for the parties to settle any dispute without the need for proceedings to be issued. The letter must inform the customer that Court proceedings will be started unless the actions required are complied with. You must allow a reasonable time for compliance, and it is possible that a more complex matter may require a longer period for a response, but generally a simple debt claim would require a response within say 14 days. The letter is for you both to “set your stall out” and each of the parties must be able to put their position out fully in the correspondence. Everyone is encouraged to use an alternative method of dispute resolution instead of going to Court, but there are some cases where Court proceedings will be inevitable. A carefully drafted letter may be the best method of resolving the dispute.

If the debt is not paid, you can:

- issue proceedings in the County Court; or
- serve a Statutory Demand under the Insolvency Act, requiring that the debtor pays the debt within 21 days.

2. What is a Statutory Demand? (“SD”) How do I use it?

If there is no defence to the claim, we usually advise serving a SD. However, this approach is only effective, if it is believed that the debtor will pay and that belief turns out to be correct!

If the SD does not result in payment, the next step is to petition the Court for the debtor’s winding-up (for companies) or bankruptcy (for individuals), which may be costly and ultimately fruitless. The debt must be over £750. Serving the SD is accordingly no guarantee that the debt will be paid. There are different procedures for claims against Companies and claims against individuals.

Company: A SD must be served upon the company at its registered office by first class post or personally by leaving it at that address. Evidence of service will be required, and we always recommend personal service. If the company has not paid within 21 days after its service a winding-up petition can be issued against the company.

A company may issue an injunction to prevent the presentation of a winding up petition.

Individual: Must be served personally on the individual. The individual then has 18 days to apply to set the SD aside (if there is a defence), or 21 days to pay the debt. If the individual has not paid the debt within 21 days, a bankruptcy petition can be issued against the individual.

In both cases the Statutory Demand must be in the prescribed form and we can assist with the correct forms. There are different forms for individuals and companies.

3. When do I use the County Courts? What is the difference between SD and County Court?

If there is likely to be a real dispute or where a potential Defendant appears to have an arguable defence to the claim, then the most effective way to use your resources is to have the claim decided upon by a Judge in either the County Court or the High Court. The difference is really about the amount of the claim and or any complex issues that might arise.

The High Court should be used if the starting point of the claim is in excess of £50,000.00 or it raises complex issues, normally of law. The advantage of a resolution by a judge or in the Courts is that it provides some certainty, but inevitably the process can take a long time, unless there is no defence to your claim.

In some cases, it may be possible to obtain a so-called judgment in default of a defence, which is a powerful sanction against an inactive Defendant; before it can be overturned, the Defendant has to show that there is a good arguable defence and prospects of success on that defence. That involves him in a time and money exercise which means inconvenience and makes it more likely that he will seek to negotiate a settlement.

The Defendant has 14 days after service of the Claim Form to reply, either by filing a defence or an acknowledgment of service. If the Defendant chooses to file the latter, he will then have another 14 days to file a defence.

If the Defendant does not reply and/or file a defence within the appropriate time period/s, we can then apply for a Judgment in Default (see above).

Even if the Defendant does reply and/or file a defence, it is possible to apply for summary judgment, if the defence has no real prospects of success. Summary judgment can be applied for at any time after the claim has been acknowledged, and can shortcut the whole procedure but should be used wisely, where the likely chances of success are assessed as high.

Key differences

The difference between the above procedures is not only cost, but time as well. The SD procedure looks easier and cheaper to begin with, but may become very expensive if disputed or if the petition is applied for, as the Court costs are higher in this type of application. This method is only successful where the SD is not contested, as it is evidence that the company or the individual is unable to pay debts as demanded, although, it is often possible to defeat a challenge to the SD. The SD route can be quicker, and overall may prove cost effective.

By contrast, even the most straightforward of cases in the County Courts may take eight to ten months to resolve, although some cases may take less time and some more time, additionally there are many mandatory stages to comply with, and the issue costs are dependent upon the value of the claim, and a further sum becomes payable when the claim is allocated, currently £100. Once judgment is obtained then there are additional costs for enforcement of the judgment.

The County Courts operate three different tiers of court cases: the small claims court, the fast track (one day cases) and the multi track, which are claims over £15,000 and

more than one day cases. There can be times when the case is looked at by a judge with the parties present in a case management conference, or through providing directions from a judge who looks at the claim on his/her own. These directions must be complied with, and you may require an expert to prove your case, and a single joint expert between the parties should be instructed. Statements of facts and a case outline are usually required.

Issues of law must be raised at any trial, together with examples of precedents to back up your case.

Along the way, there may be many costs arising from your claim. We have a duty to provide you with a costs estimate, and a cost/benefit analysis. You may wish to take out insurance to cover paying the Defendant's costs, if successful. Normally costs follow success, and unless your conduct has contributed to the costs you should look to the losing party to be the paying party.

A health warning

The Court operates to ensure that the parties are on an equal footing and that cases are dealt with justly, expeditiously and proportionately (as you might expect), but inevitably there is always a loser. And we would always caution parties: do not assume that because there is a loser, so too there must be a winner. Very often, neither party feels satisfied with the end result. Litigation in this sense is not to be confused with a business strategy, nor should it be permitted by business managers to distract them from their business.

4. How do I know that someone is worth suing? What/who is a man of straw?

In litigation, there is little worse than a pyrrhic victory. If the Defendant has no money, then commerciality suggests that there is no point in spending money to end up with a court judgment but no money actually recovered to show for it.

In relation to individual debtors/defendants, we frequently advise carrying out a land registry search in relation to the property where he/she lives and/or uses as an address, to see if he is the registered proprietor and therefore has an asset against which any judgment can be enforced. The cost for a property search is minimal, and can be conducted online. Therefore, you can choose to conduct a more in depth credit check, against an individual or company, or spend some time investigating the assets held. This can be important particularly where it is suspected that assets have been transferred between companies, or even individuals, to avoid any financial responsibility.

A man of straw is one who has no substance, or financial worth. There is no cost benefit in pursuing a claim against such a person, unless you do so in order to exhaust one possible remedy and trigger another (say, a guarantee from a 3rd party).

5. How do I know if a company is worth suing?

Before serving a Statutory Demand on or issuing a Claim Form against a company we usually advise carrying out a company search to obtain as much information as possible. Detailed information including the company's debt and borrowing power may be obtained from a credit reference agency to provide more security before a claim is issued. Simple details may be obtained about a company including its registered office, details of the directors and the company's financial status. The cost for a Company search is minimal.

It is not always easy to estimate the credit-worthiness of any company without a full credit check. The directors cannot normally be sued instead of (or in addition to) the debtor company, unless they have breached a legal duty to the company or the creditor (you!), or you have received personal guarantees from them.

6. If I get judgment how do I get my money that is owed to me?

After obtaining Judgment, the Claimant can enforce it by various means such as; Warrants of Execution against the debtors/defendants goods and chattels, Garnishee Proceedings, Attachment of Earnings, Charging Orders on land or securities and/or bankruptcy/winding-up or similar proceedings. Before taking a decision about which the best method of enforcement, a Claimant can apply to the Court to have the Defendant orally examined about his/its assets.

7. How does this work if I am not an English resident?

A Defendant is usually subject to a claim in his country of domicile, although there may be reasons why this may not be the eventual place for determining the place where the claim is heard. If you commence a claim in another jurisdiction and obtain judgment in that country, but seek to enforce that judgment in the UK against a UK resident, usually there is no problem in registering the judgment at the High Court. There is a registration process with which we can assist. Provided the judgment is enforceable in the country obtained, then generally it will be enforceable in England and Wales.

Conversely if you wish to enforce a judgment abroad we can assist with any cross border issues that may arise.

8. Interest

A Claimant is also entitled to claim interest in his Claim Form although this is a matter for the discretion of the Court. The following types of interest can be claimed:-

Contractual Interest:

An applicable contract may provide for the payment of interest in the event of delayed payment or non-payment.

Statutory Interest:

Where the debt is for a specified amount a Claimant may claim interest at the statutory rate (8% per annum). Where the debt is for an unspecified amount of money interest is claimed "for such periods and at such rates as the court sees fit".

Interest under the Late Payment of Commercial Debts (Interest) Act 1998:

Where both parties acted in the course of a business, the Claimant being a small business and the defendant a large one as defined by the Act, the Claimant is entitled to claim interest under this Act at a rate of 8 % over the official rate of the Bank of England.

Interest is a discretionary matter and the judge might choose to award at a different rate and for a different period.

This is a general guide to the often asked questions about the litigation process, for most debt claims, and there is no better way of seeking a resolution to your query than by calling our lawyers who are ready to assist with any aspect of the litigation process.

For further information and advice please contact:

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