

A Guide to

Debt Recovery

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■ Understand the different ways to recover a debt.

■ Understand what matters should be considered when taking action.

■ Understand how to enforce a County Court Judgement ("CCJ").

This Guide has been designed to assist you in understanding the basic principles and general issues surrounding debt recovery. This Guide is only intended to be a general overview of the law in relation to debt recovery. Legal advice should always be obtained from Leonard Gray in application to a particular case.

Section

1

Introduction

This Section of the Guide sets out the assumptions made and options available to you for recovering a debt.

Most, if not all businesses, regardless of the sector in which they operate, are likely to need to pursue an unpaid invoice at some time. This Guide briefly considers the main options available to your business in the event of an invoice remaining unpaid after expiry of the period for payment stipulated in your terms of business and on your invoice.

1. This Guide assumes that:

- Both parties involved operate within the jurisdiction of the courts of England and Wales.
- The unpaid sum is not more than 6 years overdue for payment (please seek further advice regarding limitation periods in the event you have a debt that is more than six years overdue).
- There is no serious dispute regarding the validity of your invoice.
- You have already sent the debtor a payment reminder, to no avail.
- The debtor is solvent to the best of your knowledge.

2. Assuming all of the above assumptions apply, the following options are available:

- (a) Threaten to commence/commence Court proceedings.
- (b) Threaten to commence/commence insolvency proceedings.
- (c) Informally try to resolve the matter through, for example, negotiation and/or mediation.
- (d) Do nothing – write off the debt.

This Guide will now explore these four main options in greater detail.

The next Section of the Guide considers the threat to commence/commencing Court proceedings.

Section 2

Court Proceedings

This Section of the Guide considers the threat to commence/commencing Court proceedings.

The key things to think about before starting Court proceedings are:

- How much are you owed and how much is it likely to cost you to start the claim and enforce any County Court Judgment (“CCJ”) against your debtor. Is it proportionate to issue court proceedings? A fee is payable to the court when you issue a claim and the fees operate on a sliding scale depending on the value of your claim. Refer to the HMCTS website for the current fees. However, as an example, if your claim is for an unpaid invoice of £600 the court fee is £70, whereas a claim for £6,000 attracts a court fee of £455.
- Be cautious about starting proceedings if you don’t intend to see them through. If you discontinue your claim you could be liable for your opponent’s wasted costs.
- Remember that your ability to recover your costs from your opponent is also affected by the value of your claim, in general if your claim is considered small (under £10,000) you can only recover limited fixed costs from your opponent.
- Consider the impact that issuing court proceedings could have on your relationship with the debtor. If the debt is relatively modest and they are usually a reliable and regular customer you may want to consider a non-litigious approach.

The Four Stages of Court Proceedings

1. Pre-Action

The “Practice Direction on Pre-Action Conduct and Protocols” contained in the Civil Procedure Rules applies to debt recovery claims and sets out that parties should

exchange sufficient information before a claim is issued to help narrow the issues and facilitate a settlement.

In most cases this requirement is satisfied by sending a “Letter Before Claim” to the debtor setting out clearly the sum owed, when it became overdue for payment and what steps you intend to take if the debt is not paid within a certain period of time. Usually you should allow the debtor 14 days to respond, before taking further action, to allow them an opportunity to either make a payment, give reasons why the debt is in dispute or to offer you a repayment plan.

If the debtor does respond disputing the debt, it is important to take steps to reply to the debtor addressing each of the points raised, regardless of whether you accept or deny their arguments, before you issue a claim at Court.

If the debtor does not respond to your Letter Before Claim, or it becomes clear that matters won't be agreed on between you, then it is appropriate to proceed to the next step.

2. Issuing a Claim

To start a claim you must complete a Claim Form and within the Claim Form itself, or in a separate document attached to the Claim Form, set out the background to your claim in the Particulars of Claim.

The Claim Form and Particulars of Claim should address:

- The services carried out or goods provided (i.e. how the debt arose).
- The sum owed to you, including a copy of the outstanding invoice(s).
- Whether you are claiming any contractual or statutory interest that has accrued upon the unpaid invoice/s. In the absence of a specific contractual clause you can take advantage of the Late Payment of Commercial Debts (Interest) Act 1998, if both parties are businesses, or where the other party is an individual as opposed to a business you may

apply the statutory rate of interest contained within section 69 of the County Courts Act 1984.

- Legal costs being claimed in addition to the debt and interest.

Once you have prepared the Claim Form and Particulars of Claim it should be filed with the Court, together with the appropriate Court fee, who will issue your claim.

In most money claims (i.e. debt claims) the appropriate court to send the claim to is the County Court Money Claims Centre ("CCMCC") based in Salford. They will issue the claim and send you a Notice of Issue.

Alternatively it is possible to issue the claim online using the government run website Money Claim Online ("MCOL"), which benefits from slightly cheaper court fees.

3. After the claim has been issued

In most cases the CCMCC will serve the claim upon the debtor who will be given 14 days from the date of service to file an Acknowledgment of Service, indicating whether they intend to admit the claim (and pay the debt) or defend the claim. If they intend to defend the claim they must file a Defence within 28 days of service of the claim upon them.

If the debtor does not respond to the claim or does not file a Defence within the requisite time then you may apply to the Court for Judgment in Default against the debtor. The Court will send you the CCJ which will be for the full sum claimed including, the Court fee paid, interest and applicable legal costs.

If however the debtor does defend the claim then the claim will usually be transferred to the nearest county court to the Defendant and that Court will give directions as to the management of the claim until trial which may include mediation, disclosure and exchange of witness statements.

4. After Judgment

If you obtain Judgment in Default, or a judgment in your favour following a trial, and the debtor still does not pay the debt owed to you then you may take steps to enforce the judgment.

There a number of different enforcement methods available including:

- Instructing County Court or High Court Bailiffs - They will obtain a Writ or Warrant giving them the power to attend the debtor's property and ask for payment or seize goods to the value of the debt.
- Charging Order – This places a charge over the debtor's property meaning that when the property comes to be sold you will be given notice and, providing there is enough equity in the property after all priority charges have been satisfied, you will receive payment from the proceeds of sale.
- Third Party Debt Order – This is an order obtained from the Court instructing a third party, such as a bank, to pay monies contained within the debtor's account to the you, the creditor.
- Attachment of Earnings Order – This is an order obtained from the Court which instructs the debtor's employer to pay monies from the debtor's wages each month directly to you, the creditor, until the debt is paid off.

The next Section of the Guide considers the threat to commence/commencing insolvency proceedings.

Section 3

Insolvency Proceedings

This Section of the Guide considers the threat to commence/commencing insolvency proceedings.

The first thing to consider is that insolvency proceedings are not intended to be used for debt recovery. However, the threat of insolvency proceedings may be sufficient to persuade some debtors to settle their debts. It can also provoke debtors to set out their reasons for failing to pay, including any dispute as to the amount payable.

Other things to consider before starting insolvency proceedings are:

- Be wary of threatening to start insolvency proceedings if you have no intention to do so. The debtor may call your bluff and it will weaken the strength of any further threats if you don't follow through.
- If you know the debt is genuinely disputed, it would be an abuse of process to issue a winding up petition against a company or issue a bankruptcy petition against an individual.
- If the debtor really is insolvent and is put into formal insolvency proceedings, you may only receive a small proportion of the debt owed, or possibly nothing at all.

The Three Stages of Insolvency Proceedings

Winding Up is the process that applies to making companies insolvent and Bankruptcy is the process that applies to making individuals insolvent.

In either circumstance the first step that should be taken, in most cases, is service of a Statutory Demand.

1. Statutory Demands

A Statutory Demand is a written notice in a prescribed form demanding payment of a debt owed. This has a similar purpose to a Letter Before Claim (discussed above) since it warns the debtor that failure to make payment within a set period of time will result in further action being taken, in this case the period is 21 days and the action is insolvency proceedings.

Serving a Statutory Demand is a quick, inexpensive and effective step to take before taking matters any further. It is, however, important to get it right and therefore it is advisable to get legal advice.

It should be noted that it is only possible to start insolvency proceedings (and therefore only worthwhile serving a Statutory Demand) against a company if they owe more than £750 and against an individual if they owe more than £5,000. For sums less than this you should instead follow the court proceedings route referred to in section 1 above.

If the debtor does not pay the debt within 21 days of service of the Statutory Demand they are deemed to be unable to pay their debts and you can commence the appropriate insolvency proceedings.

2. Winding Up

Winding Up is governed by the Insolvency Act 1986. The process is started by issuing a petition at Court and the Court will decide at a hearing whether to make a winding up order. There are various grounds on which a company can be wound up but the main one relied on is that the company is unable to pay its debts.

The current fee payable to the court upon issuing a winding up petition is £332 plus an Official Receiver's deposit of £2,600 (*correct as at March 2025*).

If a winding up order is made the directors' powers cease and the employees are automatically dismissed. An independent insolvency practitioner (known as a



liquidator) is appointed to gather in and realise all company assets and distribute the proceeds to the company's creditors.

The process can take a considerable time and there are no guarantees of any dividend at the end, regardless of whether you were the petitioner or not.

3. Bankruptcy

Bankruptcy is also governed by the Insolvency Act 1986 and this process should only be used where there is no genuine dispute as to the validity of the debt owed.

A creditor begins bankruptcy proceedings by presenting a bankruptcy petition to the debtor's local Court who will determine whether there are grounds to make the individual bankrupt. One of the grounds, as with winding up, is that it appears the debtor is unable to pay, or has no reasonable prospect of paying, the debt. This will be deemed to be the case if a Statutory Demand has been served and the debtor hasn't paid within 21 days.

The current fee payable to the Court upon issuing a bankruptcy petition is £332 plus an Official Receiver's deposit of £1,500 (*correct as at March 2025*).

If the debtor is made bankrupt a trustee in bankruptcy is appointed to realise and distribute assets among creditors. The bankrupt individual will be restricted from trading and obtaining credit, usually for one year, before being released from bankruptcy. However it may take the trustee in bankruptcy much longer to complete their role and make a distribution to creditors.

As with winding up, the dividend you may receive could be very minimal particularly if there are a number of other creditors who are also owed money from the debtor.



In conclusion, the threat of insolvency proceedings is a very strong one and often very effective. However if it does become necessary to issue proceedings it is usually only cost effective to do so in higher value claims and the ultimate dividend may be low.

The next Section of the Guide considers resolution as an alternative to Court or insolvency proceedings.

Section

4

Resolution

This Section of the Guide considers resolution as an alternative to Court or insolvency proceedings.

Before considering Court or insolvency proceedings thought should be given to informal methods of recovering a debt including negotiation and mediation. Informal methods can be a lot quicker and cheaper than litigation and, particularly where you want to retain as good a relationship as possible with the debtor, they are less confrontational.

By opening dialogue with the debtor it may be possible to negotiate a dispute. However advice should be taken as to whether correspondence and conversations take place on a without prejudice basis or open basis.

If dialogue between you and the debtor directly is difficult, or does not take matters further, it could be a good idea to involve an independent, intermediary, third party such as a mediator. A mediator can help you and the debtor work towards a settlement but they don't take over control, it remains between you and the debtor to decide whether to settle and on what terms.

Leonard Gray have a lot of experience in mediation, both in attending mediation with our clients and conducting them since one of the partners, John Appleby, is an ADR accredited civil litigation mediator himself.

The next Section of the Guide considers whether any action should be taken to recover the debt.

Section 5

No Action

This Section of the Guide considers whether any action should be taken to recover the debt.

There is, of course, the option of just writing off the unpaid sum and taking no further action. It is important to consider:

- The size of the debt.
- How easy or difficult it will be to recover the debt, what are the prospects of the debtor actually having the money to repay you?
- The cost involved, including not just legal costs but the cost of internal management time.
- The importance of the relationship between the parties and the likelihood of maintaining an ongoing commercial relationship if proceedings are taken.

At Leonard Gray we strive to advise our clients openly and honestly about whether pursuing a debtor is likely to be worthwhile and a cost effective solution.

Whilst we can't provide guarantees as to the outcome we can advise you on the best course of action for your particular circumstances and assist you during each step of the process.

The next Section of this Guide will look at how to make an appointment.

Section 6

Making an Appointment

If you would like to discuss the issues raised in this Guide further then please contact either **Mary Yusuf** or **Esteban Ocana** who will be happy to do so.

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We are based in Chelmsford town centre, a two minute walk from Chelmsford Rail Station with car parking and disabled access at the rear of our office for the use of clients.

Open Monday to Friday, 9am to 5pm. Alternative times by arrangement.

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