

Debt Recovery

As the credit crunch continues to bite, the likelihood is that more and more businesses will need to resort to debt recovery to claim unpaid bills. Below is an overview of the process.

Letter before action

The first step your solicitor will take is to write to the debtor and tell him that unless the debt is paid within a stated number of days, court proceedings will be initiated.

Court Proceedings

If payment is still not forthcoming, the next step is to start court proceedings by issuing the claim at court. There is a court fee to pay for this, which depends on the amount of the claim. This fee, along with costs, is recoverable from the debtor. The letter of claim will explain this, and also the liability for contractual or statutory interest.

Court proceedings are officially started when the court issues the claim form and sends it by post to the debtor. From that point on the creditor is referred to as the claimant and the debtor as the defendant. The court will also send the defendant a form for acknowledging that he has received the claim and forms for admitting or denying the claim. This is called the response pack.

Judgement

If the defendant fails to respond to the claim, then you can obtain a judgment against the debtor. This will take the form of a court order requiring the defendant to make a payment.

The claimant can also apply for a summary judgment if the defendant has defended the claim but has no real prospect of successfully defending it.

To apply for a summary judgment, the claimant's solicitor completes an application form and provides written evidence to support it.



A fee must be paid when it is filed with the Court. The defendant will have an opportunity to file his own evidence and a Court hearing will then take place before a Judge who will decide whether or not to award the judgment. This process usually takes between eight and 12 weeks.



When the claimant is awarded judgment against the defendant, the court will normally order that the defendant pays the debt, interests and costs including any court fees the claimant has paid.


If a judgment has been obtained in a County Court and the debtor does not meet the requirements of the judgment within one calendar month (ie: to pay up), the details of the judgment remain on the Register of Judgments, Orders and Fines. If a potential customer requests a credit reference on that debtor in the future, the CCJ will show up. The customer may therefore decide that the supplier is a bad credit risk and choose not to do business with him.

Judgments that are made by the courts are not enforced automatically. But there are a number of processes, which are designed to secure payment.

If you are lacking information about the debtor, you can obtain a Court Order, which requires the debtor to attend court and answer questions about their liabilities, assets, income and expenditure. This enables the creditor to decide which of the various methods of enforcement he will use.

If you discover that your debtor has assets then you can use a bailiff or sheriff to seize goods and sell them at auction to pay the debt. If the debtor owns land or buildings then the court can impose a charge on the debtor's property to secure payment of the due amount.

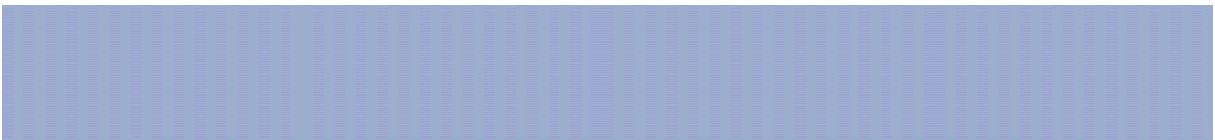
If the debtor is owed money then a court order can be obtained which requires that the person or company that owes money to the debtor, to pay the money directly to you. This will not only include trade debtors but also banks and building societies who are holding money for him. Obtaining customers' bank details when they first apply for credit really pays off in this situation.

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One alternative to court proceedings is to implement insolvency proceedings against an individual or company. The first step would be to serve a statutory demand on the debtor provided that the debt is at least £750. If the debt is not paid within 21 days of service of the statutory demand then a creditors petition can be presented at Court for a winding up order.

Boyce Hatton offer a fixed fee debt recovery service with fees starting at £60+ VAT for a letter before action.

More information is available by calling David Paull on 01803 403403 or by email david.paull@boycehatton.co.uk

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