

A Guide to our Debt Recovery Process

Else Solicitors have a dedicated debt recovery department with over 50 years of experience and expertise. Our Managing Partner, Chris Else, originally founded the firm to manage debt recovery for a number of high profile clients. He still oversees the department, and also offers a free credit control process review to help prevent debt occurring in the first place.

Below is a schematic representation of our debt recovery process and pathways. The costs for each stage and process vary, but we share all of these with you before proceeding on your behalf. It is also important to remember that we always try to recover these costs and any interest from the debtor in addition to the original debt.

Please feel free to contact Laura Charles or any of the team if you have a question or need further clarification on our debt recovery process. The members of the team can be found on our website www.elselaw.co.uk or contact Laura directly on laura.charles@elselaw.co.uk / 01283 526200.

Background Information

Before deciding on the best course of action to recover your debt we need to know as much information as possible about the debt and debtor. Please don't worry if you do not have all of this information as we may be able to find out some if it for you:

1. **About the Debt.** Do you have any or all of the items below?

- Relevant invoices
- A Statement of Account
- The original Agreement/Contract including Terms of Business
- Most recent correspondence with the debtor
- The last payment made towards the debt (if any)
- How old is the debt (if over 6 years we might be unable to issue Court Proceedings)

2. **About the Debtor.** Do you know any of the following?
- Where are they currently residing
 - Their date of birth and any other ID on your records
 - If an IVA/CVA or bankruptcy or a debt management programme is in place
 - An active contact number and email address
 - Any assets they may own
 - If they are currently in employment, and if so where
3. **Type of debtor.** Do you know which of the following they are?
- Limited Company (Ltd)
 - Limited Liability Partnership (LLP)
 - Partnership
 - Charity or government body
 - Sole Trader
 - Individual
 - Foreign (i.e. based out of jurisdiction of England & Wales)

Debt Recovery options for a Limited Company, LLP, Partnership, charity or government body

Pathway 1	Pathway 2
<p>Letter Before Action</p> <p>If we send a Letter Before Action (LBA) on your behalf the debtor has seven days to reply with payment, an offer of payment or to enter into negotiations.</p> <p>We add Late Payment Compensation, Interest and Recovery Costs to the original debt (rates will either be as per your Terms & Conditions or under Late Payment of Commercial Debts Act 1998).</p> <p>The LBA also states that County Court Proceedings will be started if there is no payment or response.</p> <p>IF NO RESPONSE OR PAYMENT THEN:</p>	<p>Threat to Liquidate</p> <p>An alternative to a LBA / County Court pathway is the insolvency route. In this respect we can issue a letter which is known as a Threat to Liquidate letter (TTL).</p> <p>In order to use this letter however you need to make sure of the following:</p> <ul style="list-style-type: none"> • The debt is over £750.00 • The debt is not disputed • The debtor company is still active <p>The TTL demands payment in 48 hours and promises that if no payment is received, a winding up petition will be presented. A TTL is very effective and we will quickly establish whether payment will be made or there are reasons why payment will not be made.</p>

County Court Proceedings

You do not have to start Court proceedings after issuing an LBA, and we will advise you on the best course of action if there is no response to the LBA.

If we do start Court Proceedings then we will usually ask the Court to serve the claim (unless the debtor resides anywhere other than the UK). At this point the debtor is referred to as the Defendant. Once the Defendant receives the claim they have the following options:

- Admit the whole claim and make an offer of payment
- Admit part of the claim and make an offer of payment for the that amount
- Dispute part of the claim
- Dispute the whole claim

Again, you will be advised on what response is received as to what the next step is.

The Court have a sliding scale for Court fees and this is dependent upon the size of your debt, and all costs and will be discussed with you before action is taken. The Court fees and a fixed cost allowed by the Court gets added to the debt.

IF NO RESPONSE OR PAYMENT THEN:

County Court Judgment

Once the Court has granted a County Court Judgement (CCJ) the debtor then has 30 days to pay in full from judgement date. If the amount is paid within that time then the entry is moved from the Register and will not show on the Defendant’s credit file or history.

If the CCJ is not paid within the month of it being registered, the CCJ will stay on the register and will show on any credit search performed against the Defendant. If the

The charge for this is much higher than an LBA but we will look to reclaim this and any other costs from the debtor.

IF NO RESPONSE OR PAYMENT THEN:

Winding Up Petition

Our litigation team can discuss options relating to issuing a Winding Up Petition. This is only taken as a last resort and is both costly and has a significant impact on the debtor (including your future relationship with them, if it is to remain).

We will discuss all options and costs with you before acting on your behalf.

NOTE RE STATUTORY DEMANDS:

Statutory Demands

A statutory Demand is an alternative insolvency option to a TTI. This is also a formal written request that a debt must be paid, and again there must be no dispute to the debt. The main difference is that the debtor has 21 days rather than two days to:

- Settle the debt
- Secure the debt by reaching an agreement for payment
- Issue an application to set aside the Demand if there is a dispute

If not paid, as detailed above, the creditor may then present a petition to the court for a winding-up order for debts of a limited company. This is used instead of the TTL as in some cases it would not be realistic to request payment in 48 hours and 21 days give the debtor time to put things into place in order to pay the debt.

defendant does subsequently pay, it will not be removed but will show on any search as "satisfied". A CCJ will stay on the Defendant's credit file for 6 years and this means you have 6 years to take any enforcement action against the Defendant.

Enforcement of a CCJ

The enforcement action you can take will depend on what information you know about your debtor. This is why it is important to **know your debtor** at the outset of the claim should you need to enforce.

We work very closely with several High Court Enforcement Agents and we also work closely with a tracing agent should you need to locate your debtor.

If you have already obtained a CCJ and need assistance with how to enforce it please give us a call and we can discuss the various options with you.

Debt Recovery options for Sole Traders and Individuals

Pathway 1	Pathway 2
<p>Letter Before Claim If we send a Letter Before Claim (LBC) on your behalf the debtor has 30 days to reply with payment, an offer of payment or to enter into negotiations.</p> <p>If the debtor is a sole trader then we add Late Payment Compensation, Interest and Recovery Costs to the original debt (rates will either be as per your Terms & Conditions or under Late Payment of Commercial Debts Act 1998).</p> <p>If the debtor is an individual we cannot apply Late Payment Compensation, but can apply Statutory Interest at a rate of 8% and</p>	<p>Threat to Bankrupt An alternative to a LBC / County Court pathway is the insolvency route. In this respect we can issue a letter which is known as a Threat to Bankrupt letter (TTB).</p> <p>In order to use this letter however you need to make sure of the following:</p> <ul style="list-style-type: none"> • The debt is over £5000.00 • The debt is not disputed • The debtor is not in an IVA or in the process of bankruptcy already <p>The TTB demands payment in 48 hours and promises that if no payment is received, we will commence bankruptcy proceedings. A</p>

any Recovery Costs you may have specified in your terms. If you do not have any provision in your terms then we cannot add any further charges.

The LBC also states that County Court Proceedings will be started if there is no payment or response.

IF NO RESPONSE OR PAYMENT THEN:

County Court Proceedings

You do not have to start Court proceedings after issuing an LBA, and we will advise you on the best course of action if there is no response to the LBA.

If we do start Court Proceedings then we will usually ask the Court to serve the claim (unless the debtor resides anywhere other than the UK). At this point the debtor is referred to as the Defendant. Once the Defendant receives the claim they have the following options:

- Admit the whole claim and make an offer of payment
- Admit part of the claim and make an offer of payment for the that amount
- Dispute part of the claim
- Dispute the whole claim

Again, you will be advised on what response is received as to what the next step is.

The Court have a sliding scale for Court fees and this is dependent upon the size of your debt, and all costs and will be discussed with you before action is taken. The Court fees and a fixed cost allowed by the Court gets added to the debt.

IF NO RESPONSE OR PAYMENT THEN:

TTB is very effective and we will quickly establish whether payment will be made or there are reasons why payment will not be made.

The charge for this is much higher than an LBC but we will look to reclaim this and any other costs from the debtor.

IF NO RESPONSE OR PAYMENT THEN:

Bankruptcy Proceedings

Our litigation team can discuss options relating to issuing a Bankruptcy Proceedings. This is only taken as a last resort and is both costly and has a significant impact on the debtor (including your future relationship with them, if it is to remain).

We will discuss all options and costs with you before acting on your behalf.

NOTE RE STATUTORY DEMANDS:

Statutory Demands

A statutory Demand is an alternative insolvency option to a TTB. This is also a formal written request that a debt must be paid, and again there must be no dispute to the debt. The main difference is that the individual has 21 days rather than two days to:

- Settle the debt
- Secure the debt by reaching an agreement for payment
- Issue an application to set aside the Demand if there is a dispute

If not paid, as detailed above, the creditor may then present a petition to the court for

County Court Judgment

Once the Court has granted a County Court Judgement (CCJ) the debtor then has 30 days to pay in full from judgement date. If the amount is paid within that time then the entry is moved from the Register and will not show on the Defendant's credit file or history.

If the CCJ is not paid within the month of it being registered, the CCJ will stay on the register and will show on any credit search performed against the Defendant. If the defendant does subsequently pay, it will not be removed but will show on any search as "satisfied". A CCJ will stay on the Defendant's credit file for 6 years and this means you have 6 years to take any enforcement action against the Defendant.

Enforcement of a CCJ

The enforcement action you can take will depend on what information you know about your debtor. This is why it is important to **know your debtor** at the outset of the claim should you need to enforce.

We work very closely with several High Court Enforcement Agents and we also work closely with a tracing agent should you need to locate your debtor.

If you have already obtained a CCJ and need assistance with how to enforce it please give us a call and we can discuss the various options with you.

a bankruptcy order for personal debts, including debts incurred as a sole trader or when trading in partnership with someone else. This is used instead of the TTB as in some cases it would not be realistic to request payment in 48 hours and 21 days give the debtor time to put things into place in order to pay the debt.

Some advice regarding Terms of Business and Credit Control Procedures

As you can see from the above information it is essential to have comprehensive terms & conditions in place, and also a credit control process that protects your business. We offer a free review service of both your Terms & Conditions, and your Credit Control Procedures. If you don't have either of these in place then again we can help develop them for you, thereby reducing your risk of bad debt and helping you recover any debt that is owed.

For information on both of these free services please contact Adam Gilbert, Partner and Head of Commercial and Corporate, via adam.gilbert@elselaw.co.uk or 01283 526200.

FAQ's relating to Debt Recovery:

What advice do you have to help avoid and resolve bad debt?

1. Ensure that you have effective Terms of Business (Terms & Conditions) which are incorporated into contracts with customers which bind them to your payment terms. We offer a free Terms & Conditions review service to help put these in place for your company or organisation.
2. Know who you are dealing with and identifying any issues ASAP. Getting all of their information at the outset of your working relationship is helpful should legal be required further down the line.
3. Ask the directors of the customer company to sign Personal Guarantees so that if their limited company is no longer active, they are personally responsible for paying the debt.
4. Instruct us as early as possible immediately debt arises. This means having an efficient credit control procedure in place which escalates quickly if your customer is in default. We regularly review our clients' credit control procedures to ensure that the best processes are in place and are followed at an early stage to improve debtor days. Credit control procedure review is a free service offered by Else Solicitors.

What is the Pre Action Protocol for Debt Claims?

In October 2017 new legislation came into force in relation to debt claims. This is known as the Pre Action Protocol for Debt Claims (commonly known as PAP). This means when writing to an individual or sole trader in relation to a debt claim, you now have to provide much more information at the outset (i.e. copies of all outstanding invoices, agreements etc.). You also have to give the debtor 30 days to respond. The idea of the new protocol being that any issues can be ironed out at the start of the case rather than at the end when costs and time have been incurred on both sides.

Along with the Letter Before Claim a standard response pack is issued to them also which includes a Reply Form, Debt Assistance sheet and Income and Expenditure. Within the 30 days given to the debtor, they have chance to complete the Reply Form and they can state whether they owe the debt, or part of it and make an offer of payment, or alternatively they can dispute it and give their reasons why.

What if the debtor responds to the Reply Form from the Letter Before Claim?

The debtor may respond to the Reply Form in the following way:-

- Admit the debt and make an offer of payment
- Admit the debt but state they are seeking financial assistance
- Admit part of the debt and dispute the remainder
- Dispute the whole debt

Depending on what response we receive, we will advise you as to the next steps to be taken. For example, if the debtor states they are seeking financial assistance, we have to give them further time before issuing any Court Proceedings.

If the debtor does not respond to the letter then you can commence County Court Proceedings with a view to obtaining a County Court Judgment and then enforcement.

What is the Late Payment of Commercial Debts (Interest) Act 1998?

The Late Payment of Commercial Debts (Interest) Act 1998 is an Act of the United Kingdom Parliament enabling businesses to charge other business customers interest on overdue accounts and to obtain compensation. The Act extends to Scotland and NI too.

Legislation allows the following compensation amount against each outstanding invoices:-

Amount of debt	What you can charge
Up to £999.99	£40
£1,000 to £9,999.99	£70
£10,000 or more	£100

the Act also allows you to claim Late Payment Interest and Recovery Costs.

Did you know: you can apply this yourself on overdue debts regardless of whether you specify this in your Terms of Business? Did you also know that you can go back up to 6 years and invoice customers on all invoices which were paid late even if they have now been paid?

What if my debt is disputed?

If your debt is disputed (despite providing all of the information to show why you believe it is a valid claim) our litigation team can pick this up for you at this point. They will talk you through the process and the best way forward and will advise of costs along the way. Again, you are not obliged to proceed further if you do not wish and any implications of this will be outlined to you.

What if I have a debt that is over 6 years old?

Debts that are over 6 years old may be statute barred which means you cannot pursue them by taking Court action. This is also known as the "Limitation Period". However, check when the last payment towards the account was made or when you last wrote to the debtor regarding the debt as the limitation period runs again from the last contact and you may be able to pursue.

If the debt is definitely over 6 years old, still contact us as we may be able to try and deal with the matter for you but we would not be able to issue any Court Proceedings on your behalf.

What if my debtor is not in this country?

We can also deal with any debtors who may be abroad and we deal with many claims where the debtor is residing in Scotland or Northern Ireland. There are further Court fees to consider and process servers and also we will have to get agents from that country involved in order to deal with any enforcement action but rest assured, the costs will be provided to you at each stage and provided that the debt is not disputed, complex or over £10,000.00, we should be able to deal with this on a fixed fee basis. If your debt is disputed, complex or over £10,000.00 – we can still do this for you but this may be one for our litigation team.

What if I have already obtained a County Court Judgment myself?

If you have obtained a County Court Judgment (CCJ) yourself and need assistance with how to enforce that Judgment, please give us a call and we can discuss the various options with you.

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