



# Debt Recovery

DMH can provide high value debt solutions with exceptional recovery rates for your business.

## The Debt Recovery Team

The Debt Recovery Team is dedicated to all business cash management, collection and asset recovery. We are able to recover any debts owed to your business with minimum fuss and maximum speed.

The service we offer is unique. We have combined the best parts of debt recovery agencies with the best parts of traditional solicitor services to provide our clients with the best of both worlds.

We are part of DMH's Commercial Litigation group and as such we have unrivalled knowledge and experience of our client's business needs. We know how to work alongside you to successfully resolve the issues your business faces.

The Team has proven experience in providing fast, friendly and reliable advice in relation to commercial transactions.

As you would expect from DMH the service is of the highest quality and the highest value possible.

There are normally three steps to the service:

## 1. Letter before action

Same day letter before action to your debtor requesting payment to you. The cost is a fixed fee of £10 and less for volume work.

## 2. Court Action

The issue of County Court proceedings within 48 hours. When successful our fees are usually recoverable from your debtor.

## 3. Judgment & Execution

To enter judgment on undefended proceedings and issue a warrant to the Sheriff on debts over £600 and the Bailiff on debts under £600.

## Additional Services

Enforcement including Insolvency proceedings.

Handling responses from the debtor.

Contested debt claims of any value.

Advocacy in all civil courts.

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# STANDARD TARIFF

PREACTION				
Letter before action				£10
COURT STAGE				Y O U P A Y (Where successful)
DEBT	COSTS	COURT	DEBTOR	
< £200	£50	£27	£77	Nil
£201-£300	£50	£38	£88	Nil
£301-£400	£50	£50	£100	Nil
£401-£500	£50	£60	£110	Nil
£501-£1000	£70	£80	£150	Nil
£1001-£5000	£80	£115	£195	Nil
£5000-£15000	£100	£230	£330	Nil
£15001-£50000	£100	£350	£450	Nil
£50001+	£100	£500	£600	Nil
<i>Additional time recorded – undisputed case</i>				£85 / Hour
JUDGMENT				
< £5000	£22	£0	£22	Nil
£5001+	£30	£0	£30	Nil
<i>Additional time recorded – undisputed case</i>				£85 / Hour
ENFORCEMENT (Warrant)				
< £125	£0	£25	£25	Nil
£126-£600	£0	£45	£45	Nil
£601+	£49.40	£22.35	£71.75	Nil
<i>Additional time recorded – undisputed case</i>				£85 / Hour
DISPUTED CASES				
				Per Engagement letter

## ¡Error! Marcador no definido. Introduction

*Prevention is better than cure*

Although improving, the UK has had very poor legislation in the area of late payment and some of the worst paying habits in Europe. Big businesses take longer to pay their bills and it now takes large companies on average 74

days to settle their bills. Unless chased, businesses in the UK will allow credit to turn into extended credit, but the conventional methods of telephone, letter and fax, will usually result in payment. England and Wales do not enjoy the same level of freedom of information as say, the U.S.A., and it is important to gather as much information as possible about a customer before extending credit. The Data Protection Act of 1998 is aimed at regulating the use of personal information by third parties. All civil court actions that result in a decision are recorded and become public information. Public searches can also be made to reveal adverse entries against personal and corporate insolvency. Property ownership is free information along with details of the trading records of any limited company. Very little other public information is available.

## **Prior to initiating legal action**

### *Late payment – What to do*

Debt collectors can be employed as an effective means of credit control and will often accept a retainer on a “no win, no fee” basis and charge 5-15% of the amount collected. Most debt collectors will visit your customer and police any installment arrangement. They cannot however, enter premises without permission and will commit an act of trespass if they do.

In addition, most law firms in the UK can also now be retained on a “no win, no fee” arrangement for chasing payment, and the impact of receiving a letter from a law firm is usually all that is required for prompt payment. The rates are about the same as for debt collectors, but a lawyer will also be able to make an assessment on the merits of any case subject to a dispute.

### *Insolvency*

An alternative to letters from a debt collector or a lawyer is a Statutory Demand in insolvency. A Statutory Demand is a useful tool to induce payment, but the courts frown on insolvency proceedings being used for collection purposes. A demand can be sent by a collection agent or a lawyer and is available for undisputed debts over £750. Where a debtor satisfies a court that there is a genuine dispute, the demand will be dismissed, with costs awarded against the creditor. The demand commands compliance by payment or security within 21 days from the date of service. It can be used against an individual, a partnership, or a company, and non-compliance provides grounds for a petition. The Insolvency Act of 1986 governs the procedure and to proceed, evidence must be produced that the company or individual is insolvent and unable to pay its debts on demand. The fee to issue a petition is £650 for a company and £450, for an individual. Lawyers' fees are in the region of £500. The petition must be issued in the court where the debtor resides or conducts business, and a hearing date is set for about six weeks later before a judge. The petition must be served personally on an individual or at the registered office of a limited company, and if an order of Bankruptcy is made, a trustee, appointed by the court, will attempt

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to realize assets for the benefit of all creditors. At the hearing, an order will be made for the amount claimed in the petition and all reasonable costs. A trade debt will rank as an unsecured claim and the costs in the petition will rank as a priority. When one is faced with a partnership or a proprietor, one will need to bankrupt the individuals and wind up the business.

### *Pre-action and non-judicial remedies*

If a customer is insolvent and not worth suing, but a creditor has a retention-of-title clause incorporated into a contract, it may be able to recover the goods sold. The crucial point to remember is whether the goods can be identified, and if they can, the creditor should inform the customer in writing not to dispose of them, and arrange for a local agent or lawyer to make an appointment with the customer for the purpose of collecting the goods. If access is refused, force cannot be employed but consideration should be given to seeking an injunction to protect the position. The decision whether to proceed should really come down to how much money is involved.

Applications for an injunction (Civil Procedure Rules 1999) are rare because they are very expensive. The court may grant an injunction before proceedings are started or after judgment has been given. The two classic injunctions are for the power to enter a debtor's premises and to search for and seize specified goods. The other order prevents a debtor from disposing of or selling assets either within or outside the country.

The application must be supported by evidence and involves a considerable amount of work. A local lawyer should be consulted and fees are likely to start at £5,000

## Legal proceedings

### *Going to court – Who should I sue and can it help?*

Before court proceedings are issued, it is necessary to establish the status of the party that owes the money. The various legal entities which may be pursued in the English courts are summarized as follows:

- 1) an individual;
- 2) a firm, of two or more individuals;
- 3) a limited company; The company may be Limited, PLC, Public Limited Company, Ltd. or Company Limited;
- 4) an unlimited company;
- 5) a Charity;
- 6) a Club; and
- 7) a corporate body.

A minor under 18 years of age or an undischarged bankrupt entity cannot be pursued in the English Courts.

### *The legal system in the UK*

The legal system in the UK has evolved over centuries, and not only England and Wales, but also Scotland and Northern Ireland have separate legal systems. In addition, the Isle of Man and the Channel Islands each have their own independent courts.

### *Civil Justice Reform and Lord Woolf*

A review of the Civil Justice Procedure has been undertaken over the last couple of years by a Senior Judge named Lord Woolf. The old rules have been thrown out and the court's discretion on how to decide a case has been increased.

The new legal regime began on April 26, 1999, and the review has led to an amalgamation of the old court rules and is underpinned by the key objectives of fairness and justice.

There are two courts in England and Wales in which proceedings can be brought, the County Court and the High Court. All claims for the value of less than £15,000 must be issued in the County Court. If the case is over £15,000 proceedings can either be issued in the County Court or The High Court of Justice. The party who brings the proceedings is known as the claimant and the party being sued is the defendant. The proceedings can be issued by the claimant in person, or a representative such as a debt collector or a solicitor. The debt collector will again be able to act on a "no win, no fee" arrangement of around 20%, but the lawyer cannot. The lawyer must offer a fixed fee or charge an hourly rate. Only a lawyer can include his or her costs, known as fixed costs, in the claim. A party can sue in any court it chooses, but where an opponent defends the claim, the proceedings are usually

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transferred to the defendant's home court. The court procedure is straightforward and any disputes in the proceedings are dealt with at a hearing where both parties must appear in person or by a sworn statement. One mustn't wait too long before any proceedings are issued, as proceedings must be issued within six years of the date on which the money becomes due for payment.

### *Civil proceedings – Un defended*

Proceedings are prepared in the form of the particulars of a claim, setting out the basis of the action, the amount owing, interest, and any costs. The proceedings are usually served by the court and by post. The court simply allows 21 days from the date of issue for the party being sued to respond to the proceedings. If it does not respond or admits the debt, the court will dispense with the need for any hearing and simply accept the case for the claimant. The decision of the court is known as a judgment. The court fee to issue proceedings is usually around 10 pence in the pound on a sliding scale with a maximum fee of £400. Solicitors' costs are fixed and can be recovered from the opponent.

Apart from the debt, the court will allow a claim for interest, at either the simple rate of 8% per annum or any reasonable rate claimed by the claimant, so long as the claim is incorporated in the claimants terms and conditions.

### *Civil proceedings – Defended*

When proceedings are issued and defense is filed, the claimant completes an allocation questionnaire and gives suggestions to the court for the future conduct of the case. The judge will look at each case and allocate a path that the case will take depending on a number of factors, but principally the value of the debt. Where a claim does not exceed £5,000, the claim will automatically be allocated to the small claims court. The hearing is private and informal, and the strict rules of evidence do not apply. Each party must bear its own costs and, apart from the debt, all that can be recovered are witness costs of up to £50 and expert fees of up to £200.

For a debt which has a financial value of no more than £15,000 but over £5,000, it will be allocated to the fast claims track. The fast claims track will look to resolve any dispute at trial within 30 weeks from the date of issue of the proceedings and the court will hear the trial in less than one day. In most cases only one expert per party is allowed, and costs are restricted to the successful party recovering from the loser about two-thirds of its cost.

For matters over £15,000, the claimant can choose either The High Court or the County Court and will be referred to multi-track proceedings. The court will also manage the timetable and encourage the parties to proceed to trial as soon as possible. The court will issue a number of directions and organize a case management hearing to carry the case forward to trial. Again, it will allow only reasonable costs at the trial, usually a recovery rate of two-thirds of the winner's costs.

Any judgment of the court is registered and will remain registered for six years. The judgment alone will affect no more than a defendant's credit

rating. It remains for the creditor to decide on the method of enforcement and the methods available in civil proceedings are limited.

### *Settling a dispute*

Where a dispute exists, the creditor should seek an opinion from a lawyer in the country where the customer resides. Going to court is not the only way of resolving a dispute. There are options in the UK such as negotiation, mediation, or arbitration. It is always worth trying to resolve a dispute without going to court, but if all else fails, consider legal action. In debt actions, very few disputes are resolved by these alternatives, but it will increase over the next few years.

### *Enforcement*

*Interest:* Every High Court judgment carries interest (Judgments Act 1838 s.17). Interest generally runs on a County Court judgment if it is for £5,000 or more – County Court (Interest on Judgment Debts) Order 1991. Enforcing a County Court judgment in the High Court means it may attract interest which would not be available in the County Court. That can be done provided the judgment is for at least £1,000.

The methods of enforcement are:

*Charging Order:* A method of securing the judgment to the extent that there is equity in the property charged, but the creditor may have to wait for payment and incur additional costs of the order for sale of the property. The County Court can make a charging order for any amount so long as the debtor is in default of payment obligations. An application can only be made to the High Court where the original judgment was for more than £5,000. In the High Court, there is no absolute requirement that the debtor be in default. Although this will be relevant to the exercise of the court's discretion whether to grant the order. The High Court, unlike the County Court, has no jurisdiction to stay an order on payment by installments.

*Garnishee Order:* An effective method where the creditor is confident that there is "any debt due or accruing due from a Garnishee (third party who owes money to the debtor) to Judgment debtor," usually a Bank. It will not generally be granted if its effect would be to favor one creditor over another. Deposit taking institutions may deduct £20 for administrative expenses when complying with an order.

*Attachment of Earnings:* Generally more successful where the debtor is in full-time regular employment with at least a reasonable income and not self-employed. The High Court can only make an order to secure payment of a High Court maintenance order. The County Court may make an order to secure payment under a High Court or County Court maintenance order or judgment debt. Application is usually made to the debtor's home court. If necessary, request a transfer.

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*Execution of Goods:* A more risky method of enforcement, unless the creditor is sure that the debtor owns some goods and chattels upon which to levy, but it can be effective where a reluctant debtor has property available for seizure. Judgment for £600 or more may be enforced through the High Court. The bailiff or High Court Sheriff will seize goods that he or she estimates will achieve the value of the outstanding debt at a public auction.

### *Registration and Enforcement of Foreign Judgments*

Any application for registration is made on affidavit and requires lodgment of the original judgment or certified copy by the home court, together with a certified translation. The English order is then served by post on the debtor, and unless an application is made by the debtor within 30 days after service, the order can be enforced as if it were an English judgment. England is a member state covered by the Civil Jurisdiction of Judgments Act 1991 and will recognize for execution, judgments of any court within the European Union and member states of the European Free Trade Association.

## **Summary of Debt Recovery procedures in England and Wales**

### **Pre-action**

In the main, a creditor must issue proceedings within 6 years of the date on which the money becomes due for payment. Proceedings may become necessary but although restricted to freezing orders, injunctions are available as a pre action remedy.

A Debt Collector or Solicitor however can recover most late payment by means of the traditional route of letter telephone. Hourly rates are rarely applied and agents can be retained on a unit price or a “no win, no fee” arrangement. A typical retainer is a charge between 5-15% of the amount collected.

Most services will provide for a solicitor’s letter to be sent to the debtor in respect of each claim, giving them seven days to pay. A chase up telephone

call is made at the end of the seven-day period. The client is contacted to review the position and to decide upon further action.

## **Court Proceedings**

In the absence of a positive response, Court action is recommended to recover the outstanding debt. Any claim issued will include limited costs awarded by the Court and interest, pursuant to contract or statute.

The Court will allow the Defendant (the entity being sued) 14 days from the deemed date of service of the Claim Form and Particulars of Claim to respond by filing with the Court either an Acknowledgment of Service form or a Defence. Provided the Acknowledgment of Service form is filed within this timescale, the Defence must be filed within 28 days of the deemed date of service.

The Defendant has three options in returning the Acknowledgment of Service form to the Court. It can admit the claim, dispute the whole of it or dispute part of it. The Defendant may put forward terms for discharging any alleged balance. If it disputes all or part of the claim, the Defendant may also bring a counterclaim against the Claimant (the party bringing the action).

If there is no reply to the service of the claim within the period allowed, a Claimant can apply to the Court for what is known as judgment in default. Provided a Claimant obtains judgment in this way, it can then seek to enforce the judgment.

If a defence is served, the Claimant will be prevented from applying for a default judgment and will have to look again at its options. At this point, or if the Acknowledgment of Service form makes it clear that the claim will be opposed, the claim in question will be treated as a defended action. Any additional work undertaken by the Solicitor from this stage is likely to be charged on an hourly basis. The Solicitor will liaise with the Claimant in order to agree a strategy for taking the matter forward. Specifically, they will agree with the scope of the work they will undertake and provide an estimate of costs for the initial stages and, if possible, for the claim as a whole.

Defended Claims with a financial value of less than £5,000 are treated as Small Claims and are usually settled by Judge in Chambers quickly and without formal rules of evidence. Limited costs are allowed. Claims with a value of between £5,000 to £15,000 are allocated to a Fast Track. This procedure will look to resolve any dispute at trial within 30 weeks from the date of issue of the proceedings and the trial will be heard in less than one day. Costs are normally restricted to the successful party recovering about two – thirds of its costs. For matters over £15,000, these are allocated to a Multi-Track and the Court will manage the timetable. The Court before the trial issues directions and again, costs are usually allowed at two-thirds of the winners costs.

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## **Enforcement**

Interest generally runs on judgment debts over £5,000 at the rate of 8% per annum.

The most common method of enforcement is **Execution of Goods**. Goods are seized by a Court Bailiff and sold at public auction.

An alternative where the Defendant owns property is to seek security by way of a **Charging Order**.

Where any debt due or accruing due from a third party, usually a Bank owes money to a Defendant it is possible to apply to the Court for a **Third Party Debt Order**.

In proceedings against individuals who are in employment an application known as **Attachment of Earnings** can be made to the Court for deductions (set by the Court) to be made each month from the Defendants salary.

Insolvency is available on debts over £750.00. The insolvency Act governs the procedure and is available against individuals, partnerships and companies. Following the issue of a Petition unless the debt is paid or provided for an Order is made appointing the Court Receiver and Manager or Trustee for individuals. The appointment is to investigate the affairs of the debtor and to realize assets for the benefit of all creditors.