

“I Have a Debtor – What Can I Do About It?”

At all times and especially in this difficult climate, it is important to get paid for the work you do. We recommend you should state your normal terms of trade with every working agreement you undertake (for example 30 days to pay).

Even if you have protected yourself as far as possible, it is not unusual for debtors to come up with the usual excuses not to pay on time:

- At present there is no one available to sign the cheque
- There's a query on your particular invoice
- It will be in the next cheque run!

Initial Demands for Payment

To demand payment of a debt, it is customary to put the demand in writing, often by a solicitor's letter known as a *Letter Before Action*. This letter is necessary and gives the debtor 14 days notice before you issue a *Claim Form*.

If you are sure there can be no dispute about the debt and it is over £750, it is possible to serve a *Statutory Demand*, as the preliminary step to a Winding Up Petition.

If the debtor still does not pay you can start Court proceedings but it is important to work out whether the debtor is solvent before spending your money chasing a debt from someone who can't pay.

To Commence Court Proceedings

You need to complete the appropriate *Court Form*, including *Claiming Interest* and pay the Court fee. You can issue a money claim on-line using the Courts Service at www.moneyclaim.gov.uk

When the Claim Form is issued, the Defendant (debtor) has to:-

- Lodge an *Acknowledgement of Service* (of the claim) within 14 days of receiving the Claim Form.
- Put in a Defence (as to why they did not pay you) within a further 14 days.

If the Defendant does not do either of these, you can ask the Court to enter a Judgment of Default (CCJ) in your favour.

Enforcement Proceedings

Armed with that Judgment (CCJ) you can then start enforcement proceedings such as instructing a Bailiff to attend and seize the Defendant's goods or putting a Charge on the Defendant's property and then asking the Court to order it's sale.

For a significant debt of more than £750, you can serve a *Statutory Demand* and then follow that up with either a *Bankruptcy Petition* (for an individual) or a *Winding Up Petition* (for a Company).

During all these procedures, you must bear in mind that any offers of payment made by the Defendant can be considered, even while other enforcement measures are continuing.

Sometimes, particularly in difficult times such as these, when Companies and individuals are going into insolvency through normal trade conditions, it is as well to be prepared to negotiate settlement which will get you actual cash sooner, rather than later. It is important to weigh up the possibility of running the risk of the Defendant not being able to pay you at all vs. taking an early settlement – that is a practical commercial decision for you to make.

Court Procedures

If the Debtor puts in a Defence, the Court will then send you an *Allocation Questionnaire* containing a series of questions about the practical aspects of the case, for example: (a) whether you are prepared to attempt some form of Alternative Dispute Resolution (ADR) (b) how many Witnesses you will need and (c) how many days are needed in Court for the Trial

In relatively simple cases, and particularly in Small Claim Track cases, where the claim is less than £5,000, the Court will issue a simple *Directions Timetable* to get the matter ready for Trial and will also appoint the trial date as soon as possible.

The Court will also suggest to you that you try to settle the matter without Trial by using Mediation or some other means of ADR. The Court will provide you with details of its own Mediation Service.

Court Hearing

If the matter is not settled by mediation or negotiation there will be a court hearing.

- You must follow the Court's directions in terms of Disclosure of documents and Witness Statements.
- It may be that you will need an Expert to assist the Court with any technical aspects of the dispute
- In many cases, particularly in the more straight forward cases, the Court will invite the parties to agree that a single *Joint Expert* should be used. The costs of which are usually shared equally between the parties.
- At the Hearing itself, you can represent yourself as a *Litigant in Person* and, if successful, ask the Court to award not only the Judgment in your favour but also costs for your time, currently set at £9.25 per hour.
- If you use a Solicitor and are successful in your case, you should be able to ask the Court to order the Defendant to pay your costs.

If you require advice regarding your particular circumstances, please telephone us to speak to one of our specialists in this field.

Or request a call back at a time suitable to yourself.

Disclaimer

These notes have been prepared by **Curwens Solicitors** as general guidance only and cannot be taken as legal advice. **Curwens Solicitors** will not be liable for any loss, direct or consequential, suffered by anyone acting or omitting to act as a result of the contents of these notes.