

A GUIDE TO CREDIT CONTROL AND DEBT RECOVERY

How do I get my money?

The initial step

Your own efforts have failed to produce any payment. What next? We can send a letter before action to the debtor. We can also serve a statutory demand.

Letter before action

The aim of a letter before action is to obtain immediate payment of your debt by the threat of court proceedings in default.

The letter requires payment within seven days. It also makes the debtor aware that non-compliance will result in a claim for interest and costs if any claim is issued.

Interest can be claimed at the present statutory rate of 8%, or at the rate provided for in your terms and conditions of trading, or in certain cases at 8% above base rate under the Late Payment of Commercial Debts (Interest) Act 1998.

Statutory demands

A Statutory Demand is a document which requires payment within 21 days. Non compliance would entitle you to present a petition to the court for the liquidation of a company, or the bankruptcy of an individual.

County Court proceedings

Issue of claim

All we need from you is a completed instruction form (please call to request one), the debtors' letter, your statement of account, outstanding invoices and purchase order.

The claim, when issued, is served by post on your debtor by the court.

Your debtor is given 14 days from that date to either make a payment to this firm or file a defence.

At the expiration of the time limit for filing a Defence, we will contact you to check whether you have received any payment and to advise you of any monies that have been paid to us.

If an offer to pay by instalments is made, you will be notified by us and you can decide whether to accept the offer.

If any contact is received by you from your debtor we suggest you direct your debtor to this

firm for the calculation of continuing interest to ensure you obtain every penny to which you are entitled.

Judgment

- If no Defence is filed within the statutory time limit, we will enter judgment and take steps to enforce it.
- If the debtor has filed a defence to the action and if the amount in dispute is £5,000 or less the claim will be dealt with as a small claim. This means that apart from the court fee and solicitors costs to start the claim you cannot recover your legal costs.
- If the claim is £5,000 or more the action will be heard by a judge in open court. Defended proceedings are not covered in this guide but we will be happy to provide separate advice on this and arrange for your representation at any hearing. Any time spent in dealing with the claim becomes chargeable at our hourly rate, available on request.

Enforcement – an introduction

Once we have obtained judgment, there are various methods of enforcement available. It is helpful to have as complete a picture as possible of your debtor's financial position to help determine the most effective method to obtain payment.

We set out below the types of enforcement action or security available to you.

- Warrant of execution
- Sheriff's warrant
- Third party debt order
- Charging order
- Attachment of earnings order
- Bankruptcy or liquidation
- Order to obtain information from judgment debtors

We can discuss with you which methods would be most appropriate.

A note about interest

Under the Late Payment of Commercial Debts (Interest) Act 1998 you can claim a hefty 8% above base rate. There are various exceptions, notably consumer credit agreements and mortgages or other securities.

When is a payment late so as to attract interest?

If there is an agreed credit period, payment is late if it is not made within that timescale. If none has been agreed, there is a period before interest starts to run of 30 days from delivery of the goods or performance of the service or, if later, the day on which the buyer has notice of the amount of the debt. There are special rules for advance payments.

Claiming interest

The debtor should be given notice in writing before or after the debt is due that the supplier

is claiming interest, but the supplier has up to six years to recover the interest by action if need be. Debtors can therefore run up considerable liabilities for accrued interest.

Additional compensation

Once the statutory interest has started to run, a supplier is also entitled to a sum by way of compensation in addition to the interest if the contract was made on or after 7 August 2002. This is

- £40 for a debt less than £1,000;
- £70 for a debt of £1,000 or more but less than £10,000; and
- £100 for a debt of £10,000 or more.

Can you contract out?

Only if the contract includes a remedy for late payment which is 'substantial' (as defined), that will prevail so as to exclude the statutory right. So if your terms provide for a lower rate than the statutory rate, you may want to review them.

Frequently-asked question about Debt Recovery

Q. If I do not have any financial information about the Defendant, how can I obtain it?

A. You can apply for an order to obtain this information from the judgment debtor. This is a hearing at which you are entitled to attend and ask the debtor any questions you wish.

Q. What is a Warrant of Execution?

A. This is a process whereby following a Judgment a County Court bailiff is requested to attend the premises of a defendant to obtain money or goods sufficient to satisfy the judgment debt and warrant costs.

Q. What is a Third Party Debt Order?

A. It is a process whereby you can require a third party who owes money to the Defendant e.g a bank, to pay enough of the debt to you to repay your judgment.

Q. What is a charging order?

A Charging Order is a method of securing a judgment debt over the defendant's interest in property to act in the same way as a mortgage.

Q. What is an attachment of earnings order?

A. An Attachment of Earnings Order is a method by which the court orders money to be paid by the defendant's employers from their salary and account to you.

Q. Can I serve a Statutory demand with a letter before action?

A Statutory Demand must be served personally on an individual or at a company's registered office and should only be used when bankruptcy or winding up proceedings are intended to be issued, and the debt is not disputed.

Q.What information do you need to issue a letter before action?

A.We need copies of all your invoices, credit notes and statement of account and purchase order

.Q. Do you need my file of papers to issue a claim?

A. Not if it is a straightforward debt recovery claim.

Q. Can I claim legal costs?

A.We ask for your costs in the letter before action but costs are not enforceable without the issue of a claim unless provided for in your terms and conditions of trading.

Q. Require further information?

A. If you would like to instruct us to recover a debt, we must first

- check that we do not already act for your debtor and that we can act for you
- ask you for copies of your debtor’s letter heading, your statement of account and copy outstanding invoice(s) and purchase order.

Please email lesleybacon@cliftoningram.co.uk detailing the following points:

Your full name

Your postal address

Contact name

Your email

Your telephone number

Name and address of debtor

Debtor’s telephone number

Debtor’s fax number

Total amount claimed (£)

Further information

WEB: WWW.CLIFTONINGRAM.CO.UK

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