

Guidance Note: Debt Recovery and Legal Action

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1. **Introduction**

These Guidance Notes are for businesses which are owed money by their customers. The Notes provide information on how to recover money owed and provide guidance on preventative measures to avoid debt.

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2. **Preventative Measures: How to Avoid Debt**

Dealing with Debtors

Management time is wasted in chasing debtors to recover debts. This can be avoided by putting in place the right processes within the business.

debtors and initiating court actions to recover debts. This can be avoided by putting in place the right processes within the business.

For example, businesses should:

- Perform adequate checks on customers before trading with them, including checking whether they are in arrears against them. This can be done using a credit reference agency (<http://www.trustonli.com>).
- Ensure that every contract is clear and conditions, in writing, and that a standard contract template is available.
- Ensure that invoice terms and conditions are clear and in accordance with the terms and conditions of the contract.

customers. This could include checking for any court judgments outstanding against them, for example at <http://www.trustonli.com>.

tightly drawn agreement, or terms and conditions, clearly set out. A wide range of contract templates is available in the contract folder.

manner, and in accordance with the terms and conditions of the contract.

Updated and co-ordinated trail of credit related documents to establish the indebtedness in the event of a dispute or legal action.

effective debt collection. An audit of the debtors' payment history, not payment as well as establishing the terms of payments and any subsequent legal action.

3. **Payment Reminders**

Once payments become late, it is important to record the late payment, the amount and the breach of contract. Correspondence should be kept for evidence.

is to send a reminder letter. This should refer to the invoice(s) in respect of the debt and request payment by return or, pending payment, by cheque.

We offer two reminder letters, the first is more strongly worded than the second.

once, with the second letter being more strongly worded than the first.

- *First Payment Reminder Letter (TR.D&C.02.01)*; and
- *Final Payment Reminder Letter (TR.D&C.02.02)*.

Commercial Debts Act Interest

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There are alternative versions of the reminder letters for interest under the Late Payment of Commercial Debts (Interest) Act 1998 ("CDA"). The CDA version is only available where there is no contractual arrangement for payment of interest. Under the CDA, the creditor is entitled to charge interest on the debt where the contract is silent on the subject of interest. Please note that the CDA does not apply to debts where both the supplier and the

er. These versions include a claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998 where there is no contractual arrangement for payment of interest. Under the CDA, the creditor is entitled to charge interest on the debt where the contract is silent on the subject of interest. Please note that the CDA does not apply to debts where both the supplier and the

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customer are acting in the consumer” contracts. See:

- *First Payment Rule (TR.D&C.02.01A);*
- *Final Payment Rule (TR.D&C.02.02A).*

It does not apply to “business to

Commercial Debts Act Interest)

Commercial Debts Act Interest)

If the amount owed by the customer should be enclosed with the invoice that the customer can be easily verified.

- *Statement of Account (TR.D&C.02.03);*
- *Statement of Account – Logo Version (TR.SA.02L); and*
- *Statement of Account – Plain Version (TR.SA.03L).*

more than one invoice, a statement should be enclosed with the invoice that the amount payable by the customer can be easily verified.

Statement of Account (TR.D&C.02.03);
Logo Version (TR.SA.02L); and
Plain Version (TR.SA.03L).

4. Repayment Agreements

It may be that, once payment is made, the money is owing and is willing to be repaid.

When sent, the customer accepts that the business is for the debt to be repaid.

If the customer makes a payment in instalments, a letter should be sent setting out the agreed terms (which include payment of interest) and the consequences for the customer if payments are not paid on time. See:

- *Letter – Accepting Instalments (TR.D&C.02.04).*

When sent in instalments, a letter should be sent setting out the agreed terms (which include payment of interest) and the consequences for the customer if payments are not paid on time. See: *Letter – Accepting Instalments (TR.D&C.02.04).*

The business may agree to accept a certain amount. Such an arrangement is documented using the *Agreement – Debt Compromise (TR.D&C.02.05).*

so long as the customer pays a certain amount. Such an arrangement is documented using the *Agreement – Debt Compromise (TR.D&C.02.05).*

Sometimes a third party may be involved in receiving the goods that the customer has ordered. This arrangement should be recorded using the *Agreement – Exchange for Goods (TR.D&C.02.06).*

the customer’s debt, in exchange for the goods received from the business. This tripartite arrangement is documented using the *Agreement – Assumption of Debt in Exchange for Goods (TR.D&C.02.06).*

If the customer requests a payment by a certain date, the business agrees to this, this agreement is documented using the *Agreement – Extension of Date for Debt Repayment (TR.D&C.02.07).*

the customer pay the debt, and the business agrees to this, this agreement is documented using the *Agreement – Extension of Date for Debt Repayment (TR.D&C.02.07).*

5. Possible Alternatives to Debt Repayment

5.1 Options where the amount owing is not disputed

but the amount owing is not disputed

If the customer does not dispute the amount owing, and the amount of debt is not in dispute, the business may instruct a debt collection agency. Organisations working as debt collection agencies include debt recovery agents and credit agents. These agents are not bailiffs; they cannot repress goods without a court order.

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Debt collection agencies will take legal action to recover your money. Some credit collection agencies will completely take over the collection of debt. If successful, they will receive an agreed proportion of the total amount owing. If not successful, they will keep the rest. They usually try to recover the debt by sending letters and telephoning customers.

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There is an industry of debt recovery agents, the ‘Credit Services

Debt recovery agents, the ‘Credit Services

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Association'. Its website

5.2 Options where the customer disputes the amount due

There are several options available if the customer owes but disputes the amount due:

- Mediation/debt counselling: a neutral third party helps the two parties to find a solution. Mediation is voluntary, which means the customer may still end up in court.
- Arbitration: an independent person hears both sides and makes a decision. Arbitration is not a court after an arbitration award is made.
- Statutory demand: a written demand for payment. If the customer does not pay, the creditor can apply to court for a judgment. A statutory demand is quite a radical step, and only to be taken if the customer has broken down irretrievably. Further information is in the appendix to these notes.

amount due

If the customer accepts that money is owed, the creditor should include:

• A statement of account: an independent person helps the two parties to find a solution. Mediation is voluntary, which means the customer may still end up in court.

• Arbitration: an independent person hears both sides and makes a decision. Arbitration is not a court after an arbitration award is made.

• Statutory demand: a written demand for payment. If the customer does not pay, the creditor can apply to court for a judgment. A statutory demand is quite a radical step, and only to be taken if the customer has broken down irretrievably. Further information is in the appendix to these notes.

6. Taking Legal Action Against a Customer

6.1 Point to consider before taking a customer to court

A business should think carefully before taking a customer to court, for the following reasons:

- Even if the court orders the customer to pay, there is no guarantee that the debt will be recovered. The customer, perhaps insolvent, may have no assets. There may be other debts outstanding against the customer, which reduces the likelihood of the debt being paid.
- Significant sums may be involved. The costs may escalate if the case goes to trial.

• Making a customer to court, for the following reasons:

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• Significant sums may be involved. The costs may escalate if the case goes to trial.

6.2 Legal terminology

The terminology used in legal proceedings that might crop up in a debt claim:

Creditor

the person or company who is owed money

Debtor

the person or company that owes money

Claimant

the person or company issuing the court action for the debt (in a claim, the creditor)

Defendant

the person or company being sued, i.e. the customer who owes the debt (the debtor)

Judgment

the court's decision of sums owed

Enforcement

the court's order to force the creditor to pay, or the court's order to force the debtor to pay (if the creditor has been issued ordering them to pay)

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6.3 Letter of Claim

If the payment remains unsuccessful in person, you should give the customer a final chance to pay before writing **before** issuing a claim. See:

- Letter of Claim (Protocol Version) (TR.D&C.02.14);
- Letter of Claim (Alternative Version) (TR.D&C.02.05).

The 'Protocol Version' of the Pre-Action Protocol for Debt Claims applies to claims against sole traders. The Protocol does not apply to businesses, therefore the Alternative Version of Claim can be used in such cases.

These letters give debtors 14 days to reply. The letter must state that court action will be initiated if they fail to reply within the given time.

This step – of trying to settle the claim before taking legal action – is important. Debtors should not make attempts to settle a claim before taking legal action.

Where the Protocol does not apply, you must give the customer 14 days' notice of your intention to issue proceedings. See:

- Letter - 14 days' notice of intention to issue proceedings to Recover Debt (TR.D&C.02.15)

6.4 County Court claim

Most claims are issued online or on paper. These rules determine which 'track' to allocate the case. The court will decide whether the case will be conducted in the County Court or the High Court, and how the case will proceed from there. It is not possible to opt for a 'small claims court'. Rather, the court will allocate the case to the 'small claims track' – and will normally hear the case in the County Court.

Rarely, a claim will be issued in the High Court (basically, if the claim is for more than £100,000). You should not issue a claim in the High Court before issuing a claim in the County Court.

6.5 Issuing a claim online

It is now possible to issue a claim online at [Money Claim Online](https://www.moneyclaim.gov.uk).

To qualify for online issue, the claim must:

- For a fixed amount of money;
- Against no more than one defendant;
- Sent to an address in England or Wales with a valid postcode.

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...res described above have been unsuccessful in person, you should give the customer a final chance to pay before writing **before** issuing a claim in writing by a formal 'Letter of Claim'.

...protocol Version) (TR.D&C.02.14);

...ernative Version) (TR.D&C.02.05).

...im complies with the Pre-Action Protocol for Debt Claims, which was introduced in October 2017. This Protocol applies to claims against sole traders. The Protocol does not apply to businesses, therefore the Alternative Version of Claim can be used in such cases.

...t the debt and give the debtor 30 days to reply. The letter must state that court action will be initiated if they fail to reply within the given time.

...taking court action – is important. Debtors should not make attempts to settle a claim before taking legal action.

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...Proceedings to Recover Debt (TR.D&C.02.15)

An application can be made online or on paper. These rules determine which 'track' to allocate the case. The court will decide whether the case will be conducted in the County Court or the High Court, and how the case will proceed from there. It is not possible to opt for a 'small claims court'. Rather, the court will allocate the case to the 'small claims track' – and will normally hear the case in the County Court.

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...net at [Money Claim Online](https://www.moneyclaim.gov.uk).

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Usually, the court will issue the Claim Form to the defendant on the day that it is submitted. For online claims must be paid by credit or debit card.

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Claims started online will be transferred automatically to the County Court where all such claims are heard. However, it will not be necessary to go to Northampton County Court if the claim progresses, it will be heard at the claimant's or defendant's local County Court to be heard.

Claims started online will be transferred automatically to the County Court where all such claims are heard. However, it will not be necessary to go to Northampton County Court if the claim progresses, it will be heard at the claimant's or defendant's local County Court to be heard.

As well as issuing the Claim Form, the court will also issue a summons and to apply for a warrant.

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6.6 Paper applications

A claim can be started on paper. The claimant completes Form N1 and sends it to the court. See:

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- *Form N1 – Claim for the sum being claimed* (the particulars of claim (the details of the claim)).

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Use Notes N1A for guidance.

- *County Court* (the court where the claim is started) [here](#).

Form N1 which you can reach by clicking [here](#).

The claimant then sends the Claim Form to the court where he or she wants to start the claim.

The claimant then sends the Claim Form to the court where he or she wants to start the claim. See:

- *Letter to Court* (the court where the claim is started) [here](#).

See: [Form N1 \(TR.D&C.02.06\)](#).

If the claim is based on the purchase of goods or services, the Claim Form. A claim for the Late Payment of Interest must be included on the Claim Form.

If the claim is based on the purchase of goods or services, the Claim Form. A claim for the Late Payment of Interest must be included on the Claim Form. An agreement (such as an agreement to purchase goods or services) should be attached to the Claim Form. A claim for interest on their claim, under the Late Payment of Interest Act 1998. The interest claim must be included on the Claim Form.

The court will start the claim by sending the Claim Form to the defendant by sending the Claim Form to the court.

The court will start the claim by sending the Claim Form to the defendant by sending the Claim Form to the court. In most cases serve it on the defendant by first class post.

The claim will be dealt with by the court. The claim will be automatically transferred to the court where the claim is started.

The claim will be dealt with by the court. The claim will be automatically transferred to the court where the claim is started. The court where Form N1 was submitted, or will be transferred to the nearest County Court if:

- The case is defended.
- The claim is for a sum of more than £10,000.
- The defendant is a company.

The court where Form N1 was submitted, or will be transferred to the nearest County Court if:

In other cases, either the claimant or the court may apply for the case to be transferred to another County Court.

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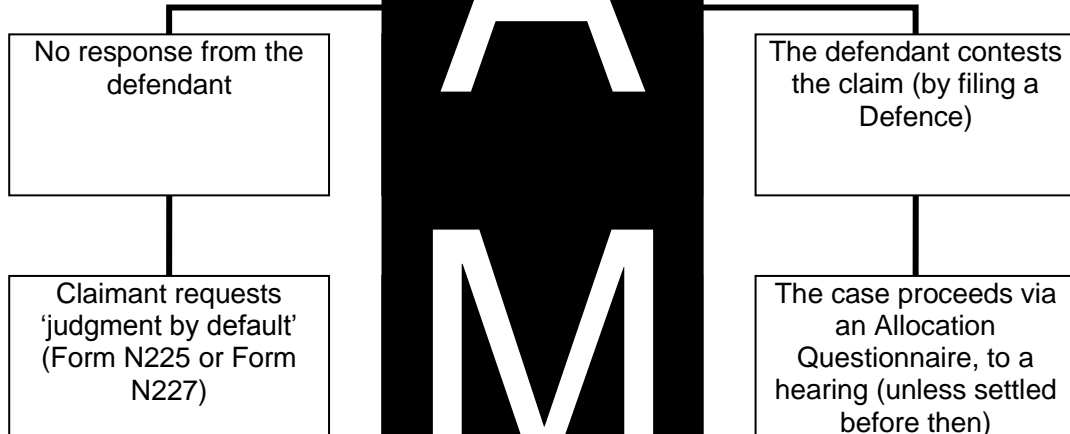
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6.7 How the court action proceeds



(i) The defendant is not responding

There are two scenarios where the defendant does not respond to the claim: either they do not respond at all, or they do not respond in time.

- (a) If the *defendant* does not respond to the claim, the claimant can request judgment by default. If the claim was issued online, the claimant can request judgment by default online. If the claimant received a Notice of Issue, the claimant can request judgment by default by sending a Notice of Issue and Request for Judgment by Default (Form N225) to the court.

If the claim is for a sum of money, the tear-off section will be a Form N225. See [Form N225 - Requesting Judgment and Reply to Admission](#) v

This should be sent to the court with a covering letter. See: [Letter – Requesting Judgment in Default on Form N225 \(TR.D&C.GN.01\)](#)

If the claim is for a sum of money, the tear-off section will be a Form N227. See [Form N227 - Requesting Judgment in Default](#) which you can find on the court website. This should be sent to the court with a covering letter. See:

the defendant does not defend the case; either they do not respond at all, or they do not respond in time by admitting that the money is owed.

It is relatively easy for the claimant to request judgment by default. If the claim was issued online, 'judgment by default' can be requested online. If the claimant received a Notice of Issue when the claim was issued, the claimant can request judgment by default by sending a Notice of Issue and Request for Judgment in Default (Form N225) to the court.

If the claim is for a sum of money, the tear-off section will be a Form N225. See [Form N225 - Requesting Judgment and Reply to Admission](#) v

This should be sent to the court with a covering letter. See: [Letter – Requesting Judgment in Default on Form N225 \(TR.D&C.GN.01\)](#)

If the claim is for a sum of money, the tear-off section will be a Form N227. See [Form N227 - Requesting Judgment in Default](#) which you can find on the court website. This should be sent to the court with a covering letter. See:

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➤ Letter – Request for Judgment in Default on Form N227 (TR.D&C.02)

Request for Judgment in Default on Form

(b) If the defendant acknowledges the claim, (i.e. they acknowledge that they owe the claimant) they will have filed Form N9A. The defendant may choose to pay by instalments or in one lump sum at a date in the future. The defendant may fail to make any proposal for payment. The claimant may respond in any of the ways in which the claimant may respond.

the claim, (i.e. they acknowledge that they owe the claimant) they will have filed Form N9A. The defendant may choose to pay by instalments or in one lump sum at a date in the future. The defendant may fail to make any proposal for payment. The claimant may respond in any of the ways in which the claimant may respond.

If the claimant accepts the proposal for payment, the claimant should complete Form N225 (above) and send it to the court with a covering letter.

proposal for payment, the claimant should complete Form N225 (above) and send it to the court with a covering letter.

➤ Letter – Request for Judgment on Form N225 (TR.D&C.02)

Accepting Payment Proposal on Form N225 (TR.D&C.02)

If the defendant does not accept the proposal for payment, the claimant must give reasons in Form N225. The claimant should send the court with a covering letter. See:

the claimant must give reasons in Form N225. The claimant should send the court with a covering letter. See:

➤ Letter – Request for Judgment on Form N225 (TR.D&C.02)

Requesting to Payment Offer on Form N225 (TR.D&C.02)

A court official will discuss possible arrangements with the defendant.

possible arrangement should be.

If the defendant does not make any proposal for payment, Form N225 should be completed and sent to the court with a covering letter. See:

but has not made any proposal for payment, Form N225 should be completed and sent to the court with a covering letter. See:

➤ Letter – Request for Judgment on Form N225 (TR.D&C.02)

Request for Judgment of Payment on Form N225 (TR.D&C.02)

Following receipt of the defendant's response, the court will send both parties an Order for Judgment.

response, the court will send both parties an Order for Judgment.

(ii) The defendant disputes the claim

If the defendant disputes the claim, they must complete Form N1 with a 'Defence' and send it to the court. The court will send an Allocation Questionnaire to both parties. The court will use the information provided to decide which track the case will be allocated to. In the questionnaire, the court will provide 'directions', in other words, tell the parties what to do and by when. It is important to follow directions exactly. Failure to do so may result in a fine or the case may be postponed.

have to respond to the N1 Claim Form. If the defendant's response is returned to the court, the court will send an Allocation Questionnaire to both parties. The court will use the information provided to decide which track the case will be allocated to. In the questionnaire, the court will provide 'directions', in other words, tell the parties what to do and by when. It is important to follow directions exactly. Failure to do so may result in a fine or the case may be postponed.

The directions may include a date for a preliminary hearing before trial, may list the issues to be dealt with at the hearing and directions will be made if necessary. See:

there are matters to be dealt with at a preliminary hearing before trial, may list the issues to be dealt with at the hearing and directions will be made if necessary. See:

➤ Letter – Request for Judgment on Form N225 (TR.D&C.02)

Request for Judgment on Form N225 (TR.D&C.02)

If the parties are able to agree the directions that should be made at the preliminary hearing, the court will send an Order for Judgment without a preliminary hearing. There would usually be an exchange of written offers of settlement before the preliminary hearing.

directions that should be made at the preliminary hearing, the court will send an Order for Judgment without a preliminary hearing. There would usually be an exchange of written offers of settlement before the preliminary hearing.

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of correspondence by the court. This correspondence should be sent to the court with a request that the court make the following directions:

- *Letter – Proposed Directions* (TR.D&C.02.1)

requesting and agreeing to proposed directions. This correspondence should be sent to the court with a request that the court make the following directions:

Letter to be Agreed between Parties

The directions may require the parties to disclose documents that are relevant to their case. This is a list of documents on the other party. The list must include documents on which the party relies on and documents which are adverse to the party. The other party is entitled to inspect any document in the list.

The directions may require the parties to disclose documents that are relevant to their case. This is a list of documents on the other party. The list must include documents on which the party relies on and documents which are adverse to the party. The other party is entitled to inspect any document in the list.

- *Letter – Request for Copies of Documents* (TR.D&C.02.2)

Letter for Copies of Documents

If the parties are able to agree the directions in writing and a copy of the agreement should be sent to the court. See:

If the parties are able to agree the directions in writing and a copy of the agreement should be sent to the court. See:

- *Letter – Settlement of Dispute* (TR.D&C.02.3)

Letter on Discontinuation of Court Case

When the trial has ended, the court will send an order to the parties. Reasons for the decision will be given. Occasionally, a case may be dealt with by the court without a trial (known as a summary judgment or summary judgment on the papers before them), but this will only happen in certain circumstances.

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7. Effect of Court Orders and Judgments

7.1 Requesting payment of a judgment

If the claim has been decided in your favour, the court will order the debtor to pay the claimant directly. A judgment is a court order for the debtor of the terms of the claim.

If the claim has been decided in your favour, the court will order the debtor to pay the claimant directly. A judgment is a court order for the debtor of the terms of the claim.

- *Letter – Request for Payment of Judgment* (TR.D&C.02.12)

Letter for Payment of Judgment (TR.D&C.02.12).

7.2 Information about the debtor's financial standing

If the debtor does not pay the claim, the claimant can apply to the court for an order that the debtor company) attend court to provide information about their financial standing. This is done by completing Form N316 (for an individual debtor) or Form N316A (for a company debtor).

If the debtor does not pay the claim, the claimant can apply to the court for an order that the debtor company) attend court to provide information about their financial standing. This is done by completing Form N316 (for an individual debtor) or Form N316A (for a company debtor).

- *Form N316 – Information about Debtor which you are questioning*
- *Form N316A – Information about Debtor which you are questioning*

You should firstly check to see that the claimant has provided information about the customer's finances, the court will order that the debtor (or an officer of the company) attend court to provide information about their financial standing. This will establish the debtor's financial standing. See: [Form N316](#) (for an individual debtor) or [Form N316A](#) (for a company debtor). See: [Form N316](#) (for an individual debtor) or [Form N316A](#) (for a company debtor).

7.3 Enforcement of a court order

Once the debtor's financial standing has been established, it's worth applying to the court for an order that the debtor pay the claimant. The court will order the debtor to pay the claimant. The court will also order the debtor to pay the claimant's costs. The court will also order the debtor to pay the claimant's costs.

Once the debtor's financial standing has been established, the next step is to decide whether to apply to the court for an order that the debtor pay the claimant. The court will order the debtor to pay the claimant. The court will also order the debtor to pay the claimant's costs. The court will also order the debtor to pay the claimant's costs.

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(i) Warrant of Control - Debtor's property

A Warrant of Control (also known as a Warrant of Execution) gives a County Court bailiff a right to enter a debtor's property to collect the debt. If the debt is not paid, the bailiff has the power to remove and sell belongings in order to recover the debt. The bailiff should establish the make, model and number plate of the vehicle. This is usually the most effective method for the bailiff.

A Warrant of Control can be obtained by paper application or by using the Money Claim Online website or

- *Form N323 - Requesting Warrant of Control* which you can read [here](#).

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(ii) Attachment of Earnings - Debtor's salary

If the debtor is an individual, the court can make an Attachment of Earnings Order. This directs the debtor's employer to deduct an amount from the debtor's earnings each month and pay it to the creditor.

An application for such an order is made on *Form N337*. See: *Requesting Attachment of Earnings Order* which you can read [here](#).

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(iii) Third Party Debt Order - Money from third party

If the debtor has assets, the court can make a Third Party Debt Order. This usually stops the defendant from taking money out of a third party's account. If the money owed is paid directly to the creditor from the account, the court can make a Third Party Debt Order.

An application for such an order is made on *Form N349*. See: *Requesting a Third Party Debt Order* which you can read [here](#).

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Issuing a Statutory Demand – the process

If the customer is solvent, and the debt is greater than £750 in the case of a corporate debtor or more than £500 in the case of an individual debtor (including a sole trader), the creditor can issue a statutory demand giving the debtor 21 days warning to pay the debt.

If the debtor does not respond to the statutory demand to be set aside (within the 21 days for individuals and sole traders) the creditor can apply for a bankruptcy petition (for companies). This effectively stops the debtor's business from functioning.

The law assumes that a statutory demand is a debt collecting device in its own right, without the need to proceed to court. However, a statutory demand is used as a 'bluff', and it is actually rare for it to result in a petition for bankruptcy or winding up. Issuing a statutory demand is effective in its own right.

- A statutory demand is simple to issue and can be prepared by the creditor themselves, and does not need to be involved.
- A statutory demand can be issued without the need to obtain a court judgment.
- The statutory demand can be served by hand or by post (there is no need for personal delivery).
- The recipient will often be willing to pay immediately or, alternatively, they may offer property as security or pay in another way such as by instalments.

In theory, if the debtor does not respond to the demand, the creditor can apply to court with a bankruptcy petition or winding up petition. However, if the court finds in favour of the debtor, the debtor will be wound up and the creditor being paid! Unfortunately, the creditor is not a secured creditor and has no priority over whatever money becomes available.

Important note – a statutory demand is not a court order. If the service of the statutory demand is set aside, the court will halt the proceedings. If there is any dispute about the sum of the debt, the creditor can apply to court to have the statutory demand set aside, and this may result in an order for costs to be paid by the creditor.

In summary, a statutory demand is a serious step, and should only be used where there is no question that the debt is owed and where the relationship with the customer has totally broken down.

Please refer to the relevant page on our website (which you can reach by clicking [here](#)) for further information and to obtain the appropriate form.

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