

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 manage debts owed money and provide guidance on legal action.

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2. **Preventative Measures: How to Avoid Debt Problems with Debtors**

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For example, businesses could:

- Perform adequate checks on new customers. This could include checking whether they are on any court judgments outstanding against them. This can be done via an online search, for example at <http://www.trustonli>
- Ensure that every contract is clear and conditions, in particular terms and conditions, is available to all customers. A wide range of contract templates is available in the contract folder.
- Ensure that invoice terms and conditions are clearly set out. A wide range of invoice templates is available in the invoice folder.

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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 in a separate folder.

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

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

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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 available in the *Commercial Debts Act Interest* folder. Under the CDA, the creditor is entitled to charge interest on late payment if the contract is silent on the subject of interest. Please note that the CDA version is only available 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)*

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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 – Logo 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 Logo Version (TR.SA.03L).*

**4. Repayment Agreements**

It may be that, once payment is made, the money is owing and is will 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).*

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

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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 agreement has been reached.
- 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 a warning of an application to court for a judgment if payment is not received. It 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

The customer accepts that money is owed but disputes the amount due:

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## 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.

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### 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 a debt (in a debt claim, the creditor)

*Defendant*

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

*Judgment*

the court's decision on the amount 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 (in a debt claim, the creditor)

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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 states that court action will be initiated if they fail to reply within this 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 requires you to give notice of their intention to issue a claim:

- Letter - 14 days (TR.D&C.02.14)

6.4 County Court claim

Most claims are issued online or on paper. These rules determine which 'track' to allocate the case will be conducted in. The case will proceed from the 'small claims court' rather than the 'small claims track' – and will normally be heard in the County Court.

Rarely, a claim will be issued in the High Court (basically, if the claim is for more than £100,000).

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:

- For a fixed amount;
- 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 essential to give the customer a final chance to pay before writing a claim in writing before issuing a claim 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, 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 states that court action will be initiated if they fail to reply within this time.

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

...must give the customer 14 days' notice of their intention to issue a claim. See:

- Letter - 14 days (TR.D&C.02.14)

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

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Usually, the court will... the day that it is sub... credit or debit card.

...e Claim Form to the defendant on... for online claims must be paid by

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Claims started online... Court' where all such... to go to Northampton... transferred automatic... Court to be heard.

...ne name of 'Northampton County... However, it will not be necessary... if the claim progresses, it will be... ant's or defendant's local County

As well as issuing th... and to apply for a wa

...s also possible to enter judgment,... these steps are discussed below.

6.6 Paper applications

A claim can be starte... See:

...he claimant completes Form N1

- Form N1 – C... here. This fo... sum being cl... of claim (the

...n which you can reach by clicking... claimant and defendant and the... includes space for the particulars

Use Notes N1A for g

- County Cour... here.

...A which you can reach by clicking

The claimant then se... he or she wants to st

...of the Form N1 to the court where... with a covering letter. See:

- Letter to Cou... m Form N1 (TR.D&C.02.06).

If the claim is base... purchase goods or s... the Claim Form. A cl... the Late Payment of... must be included on

...ment (such as an agreement to... agreement should be attached to... claim interest on their claim, under... rest) Act 1998. The interest claim

The court will stam... defendant by sending

...in most cases serve it on the... st class post.

The claim will be dea... be automatically tran

...ch Form N1 was submitted, or will... s nearest County Court if:

- The case is defe
- The claim is for a
- The defendant is

...pany.

In other cases, eithe... County Court.

...case to be transferred to another

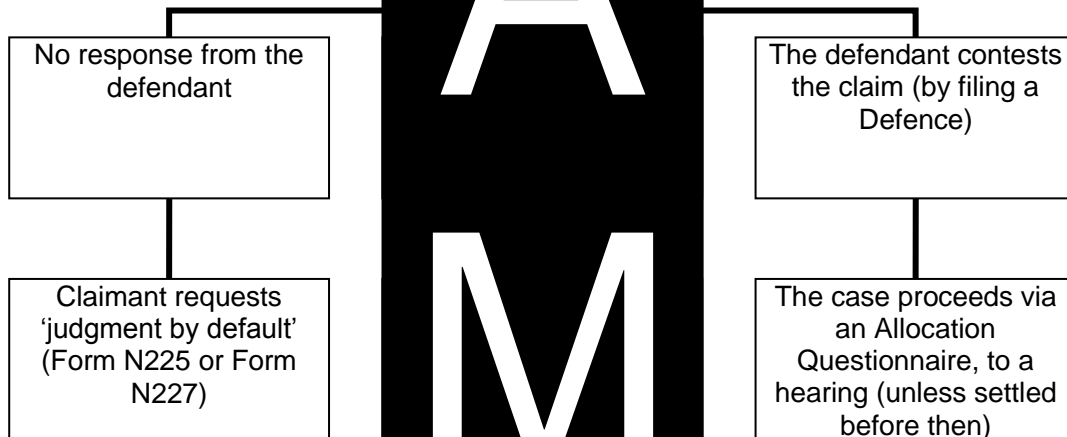
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6.7 How the court action proceeds



(i) The defendant is not defending the case

There are two scenarios where the defendant does not defend the case; either they do not respond to the claim or they admit the claim is owed.

- (a) If the *defendant* does not defend the case, it is relatively easy for the claimant to obtain judgment by default. If the claim was issued online, the claimant can request judgment by default online. If the claim was issued on paper, the claimant will have received a Notice of Issue when the claim was issued. The claimant can request judgment by default in the action in which the claimant can request judgment by default.

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 with a covering letter. See: *Letter – Requesting Judgment in Default on Form N225 (TR.D&C.GN.01.A)*

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 at [here](#). This should be sent 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.

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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.

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➤ 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:

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

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A court official will discuss possible arrangements with the defendant. A suitable arrangement should be agreed.

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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 on Form N225 (TR.D&C.02)

Following receipt of the defendant's response, the court will send both parties an Order for Judgment on Form N225 (TR.D&C.02).

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**(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, tell the parties what you want 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, tell the parties what you want 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 be given before trial, may list the issues to be dealt with at a preliminary hearing at which further directions will be made if necessary. The hearing date can be made if necessary. See:

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➤ 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 on Form N225 (TR.D&C.02) without a hearing. There would usually be an exchange of letters between the parties and the court.

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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.02.10)

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

- *Letter – Request for Copies of Documents* (TR.D&C.02.11)

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

- *Letter – Settlement or Discontinuance of Court Case* (TR.D&C.02.12)

When the trial has ended, the court will order the order will be sent 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 based on the papers before them), but this will only happen in certain cases.

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**7. Effect of Court Orders and Judgments**

**7.1 Requesting payment of a judgment**

If the claim has been successful, the court will order the debtor to pay the claimant directly. A claimant can request the court to order the debtor of the terms of the judgment.

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

**7.2 Information about the debtor's financial standing**

If the debtor does not have enough money to pay the claimant, the claimant can apply to the court to find out if the debtor company) attached to the court to find out the debtor's financial standing. This can be done by using Form N316 (for an individual debtor) or Form N316A (for a company debtor).

- *Form N316 – Request for Information about Debtor* which you can find [here](#);
- *Form N316A – Request for Information about Debtor* which you can find [here](#).

**7.3 Enforcement of a court order**

Once the debtor's company has been found to be in default, it's worth applying to the court for an enforcement order and which one will be most appropriate. The court to commence a claim for enforcement orders described below, a further fee will be payable to the court.

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**(i) Warrant of Control - Property**

A Warrant of Control (also known as a Warrant of Execution) gives a County Court bailiff a creditor'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. You 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 applied for on the Money Claim Online website or by paper application.

- *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, you can make an Attachment of Earnings Order. This directs the 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 - from third party**

If the debtor has assets held by any other person, the court can make a Third Party Debt Order. This usually stops the defendant from taking money out of the account. Money owed is paid directly to the creditor from the account.

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.

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

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The law assumes that a statutory demand is a debt collecting device in its own right, without the need to proceed to court. In other words, 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.

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- A statutory demand is simple to issue and can be prepared by the creditor themselves, and does not need to be served by a court official.
- 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 able to pay the debt immediately or, alternatively, they may offer property as security for the debt or pay in instalments.

A statutory demand can be prepared by the creditor themselves, and does not need to be served by a court official. A statutory demand can be issued without the need to obtain a court judgment.

In theory, if the debtor does not respond by paying the debt, or applying for the statutory demand to be set aside (within the 21 days), the creditor can apply for a bankruptcy petition (for individuals and sole traders) or a winding-up petition (for companies). However, this may still not result in a petition for bankruptcy or winding up if the money is definitely owing.

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**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 for the statutory demand to be set aside, and this will result in an order for costs to be paid by the creditor.

**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 for the statutory demand to be set aside, and this will 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.

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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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