

Guidance Note: Debt Recovery and Legal Action

1. Introduction

These Guidance Notes are for businesses which are owed money by their customers. The Notes provide guidance on how to recover money owed and provide guidance on legal action.

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

Management time is wasted in chasing debtors and initiating court actions to recover debts. This can be avoided by having the right processes in place within the business.

For example, businesses should:

- Perform adequate checks on customers. This could include checking whether they have any court judgments outstanding against them. This can be done by an online search, for example at <http://www.trustonline.co.uk>
- Ensure that every contract, invoice and conditions, in whatever form, are clearly set out. For example, see the following examples: *Terms and Conditions of Goods and Services (Business to Business)* (TR.D&C.02.01); and *Terms and Conditions of Goods and Services (Business to Consumer)* (TR.D&C.02.02).
- Ensure that invoices clearly state the terms and conditions of sale.

Updated and co-ordinated credit control systems, including a trail of credit related documents, can help to identify the indebtedness in the event of a dispute or legal action.

3. Payment Reminders

Once payments become overdue, businesses should send a reminder letter. This should include details of the late payment, the invoice(s) in respect of the payment, the amount and the breach of contract. The letter should be sent by return or, pending payment, correspondence should continue.

We offer two reminder letters. The first is a standard letter, and the second is 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).

There are alternative versions of the letters. These versions include a claim for interest under the Late Payment of Commercial Debts (Interest) Act 1998.

("CDA"). The CDA version of the CDA is an arrangement for payment of interest. The creditor is entitled to charge interest on the debt. Please note that the CDA only applies where both the supplier and the customer are acting in the course of business. It does not apply to "business to consumer" contracts. See:

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

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

- *Statement of Account* (TR.D&C.02.03);
- *Statement of Account* (TR.D&C.02.04); and
- *Statement of Account* (TR.D&C.02.05).

4. **Repayment Agreements**

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

If the customer makes a proposal to repay the debt in instalments, a letter should be sent setting out the agreed terms of repayment (including payment of interest) and the consequences for the customer if the debt is not repaid on time. See *Letter of Intent to Repay* (TR.D&C.02.06).

The business may agree to accept a certain amount. Such an agreement is known as a *Debt Compromise* (TR.D&C.02.07).

Sometimes a third party may be involved in receiving the goods that the customer has supplied. This arrangement should be recorded in a *Debt Exchange for Goods* (TR.D&C.02.08).

If the customer requests an extension of time to pay the debt, and the business agrees to this, this agreement should be recorded in a *Debt Extension of Date for Debt Repayment* (TR.D&C.02.09).

5. **Possible Alternatives to Repayment**

5.1 **Options where the debt is not disputed**

If the customer does not dispute the debt, the business can instruct a debt collection agency. Organisations working as debt collection agencies include debt recovery agents and bailiffs; they cannot repossess goods without a court order.

Debt collection agencies will take legal action to recover your money. Some credit agencies will completely take over the collection of debt. If a debt collection agency takes legal action to recover your money, it will completely take over the collection of debt. If a debt collection agency takes legal action to recover your money, it will completely take over the collection of debt.

where there is no contractual obligation to pay. Under the CDA, the creditor is not entitled to charge interest on the debt where the contract is silent on the subject of interest. It does not apply to "business to consumer" contracts. See:

Commercial Debts Act Interest (TR.D&C.02.10).

Commercial Debts Act Interest (TR.D&C.02.11).

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Options where the debt is not disputed but the amount owing is not

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the total amount owing and try to recover the debt by sending letters and telephoning customers.

There is an industry body for recovery agents, the 'Credit Services Association'. Its website is www.credit-services.co.uk.

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5.2 Options where the customer disputes the amount due

There are several options available if the customer accepts that money is owed but disputes the amount due:

- Mediation/debt counselling: an independent person helps the two parties to find a solution. Any agreement reached is entirely voluntary, which means the claimant cannot be forced to stick to it. The claimant can still end up in the courts.
- Arbitration: an independent person hears both sides and makes a decision. Arbitration is binding, and the parties cannot go to court after an arbitration decision.
- Statutory demand: a formal application to court for payment is not made until a statutory demand is taken if the debt is irretrievably due. Further details are in the appendix to these notes.

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6. Taking Legal Action Against a Debtor

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 debt to be recovered, the customer, possibly insolvent, may not have the assets to pay. There may be other debts outstanding against the customer, which reduces the likelihood of the debt being paid.
- Significant sums may be involved in pursuing the case. The costs may be high.

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- Significant sums may be involved in pursuing the case. The costs may be high.

6.2 Legal terminology

The terminology used in legal proceedings that might crop up in the context of a debt:

Creditor

Debtor

Claimant

Defendant

Judgment

the following. Below are some of the terms that might crop up in the context of a debt:

Person who is owed money

Person that owes money

Person issuing the court action for the debt (i.e. the creditor)

Person being sued, i.e. the customer who owed the debt (i.e. the debtor)

Sum of sums owed

Enforcement

The processes carried out to force the creditor to pay, once a court order has been issued ordering them to pay

6.3 Letter before action

If the payment reminders and other measures described above have been unsuccessful in prompting payment, it is essential to give the customer a final chance to pay before starting legal action. A court will expect the claimant to have set out a claim in writing **before** issuing proceedings. This is done by a formal 'Letter before Action'. See the *Letter before Legal Action (TR.D&C.02.05)* which sets out the debt and gives the other party a reasonable time to reply – one month is usual. The other party should also be warned that court action will be initiated if they fail to reply within the given time.

This step – of trying to settle a claim before taking court action – is important. The courts may penalise a claimant who does not make attempts to settle a claim before taking legal action.

6.4 County Court claim

Most claims are issued in the County Court. An application can be made online or on paper. These methods are explored below. The County Court will decide which 'track' to allocate the case to. This decision will then determine whether the case will be conducted in the County Court or the High Court, and how the case will proceed from that point on. Note that there is no such thing as a 'small claims court'. Rather, smaller scale claims will be allocated to 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). Legal advice should be sought before issuing a claim in the High Court.

6.5 Issuing a claim online

It is now possible to issue a claim on the internet at [Money Claim Online](#).

To qualify for online issue, the claim must be:

- For a fixed amount less than £100,000;
- Against no more than two people or organisations;
- Sent to an address in England or Wales with a valid postcode.

Usually, the court will issue, print and send the Claim Form to the defendant on the day that it is submitted online. Court fees for online claims must be paid by credit or debit card.

Claims started online are always issued in the name of 'Northampton County Court' where all such claims are processed. However, it will not be necessary to go to Northampton to attend a hearing – if the claim progresses, it will be transferred automatically to either the claimant's or defendant's local County Court to be heard.

As well as issuing the initial claim online, it is also possible to enter judgment,

and to apply for a warrant.

These steps are discussed below.

6.6 Paper applications

A claim can be started by completing Form N1 (see *Form N1 – Claim form* (TR.D&C.02.06A)) which gives details of the claimant, the defendant, the sum being claimed. The Claim Form includes space for details of the claim (the details). Use Notes N1A (see *Notes N1A – Claimant N1A* (TR.D&C.02.06B)).

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The claimant then sends the completed Form N1 to the court where the claim is made, together with a covering letter (see *Letter N1 – Covering letter* (TR.D&C.02.06)).

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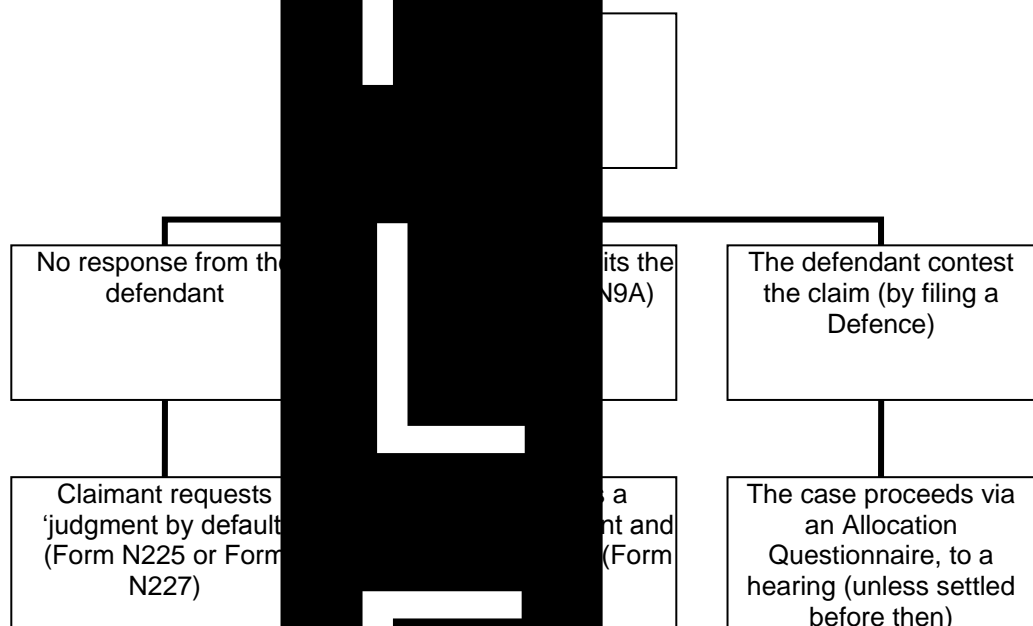
- The case is dealt with by the court where the claim was submitted, or will be automatically transferred to the court nearest County Court if:
- The claim is for a sum of money of less than £10,000.
- The defendant is a company.

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

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6.7 How the court action proceeds



(i) The defendant is not

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 by admitting that the money is owed.

- (a) If the defendant does not respond to the claim, the claimant can request judgment to obtain judgment to obtain judgment. If the claim was issued online, the claimant can request judgment online. If the claimant has received a Notice of Issue, the claimant can request judgment by sending a Notice of Issue to the court.

If the claim is for a sum of money, the tear-off section will be a Court Form Requesting Judgment (Form N225 (see *Letter – Request to County Court for Judgment in Default on Form N225*)).

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- (b) If the defendant does not respond to the claim, the claimant can request judgment to obtain judgment to obtain judgment. If the claim was issued online, the claimant can request judgment online. If the claimant has received a Notice of Issue, the claimant can request judgment by sending a Notice of Issue to the court.

If the claimant asks the defendant to make a proposal for payment, the claimant should complete a Court Form Requesting Judgment (Form N225 (see *Letter – Request to County Court for Judgment in Default on Form N225*)).

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

(ii) The defendant disputes

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

It is relatively easy for the claimant to obtain judgment to obtain judgment. If the claim was issued online, the claimant can request judgment online. If the claimant has received a Notice of Issue, the claimant can request judgment by sending a Notice of Issue to the court.

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the claim, (i.e. they acknowledge that they owe the money). The claimant will have filed Form N9A. The claimant can request judgment to obtain judgment to obtain judgment. If the claim was issued online, the claimant can request judgment online. If the claimant has received a Notice of Issue, the claimant can request judgment by sending a Notice of Issue to the court.

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If the defendant disp...
Form with a 'Defence...
send an Allocation...
information provided...
case will be allocate...
words, tell the partici...
follow directions exa...
postponed.

The directions may...
before trial, may lis...
directions will be ma...
using the *Letter*...
(TR.D&C.02.08).

If the parties are ab...
preliminary hearing,...
directions without a h...
of correspondence b...
directions. This corre...
that the court make t...
for Trial to be applied

The directions may r...
to their case. This is...
The list must include...
which are adverse to...
document in the lis...
Documents (TR.D&C

If the parties are ab...
writing and a copy o...
court. See *Letter* –...
Case (TR.D&C.02.11

When the trial has...
Reasons for the dec...
dealt with by the co...
but this will only happ

7. **Effect of Court Orders and**

7.1 **Requesting payment**

If the claim has been...
claimant directly. A...
debtor of the terms o...
Judgment (TR.D&C.0

7.2 **Information about t**

If the debtor does n...
customer can afford...
claimant can apply to

have to respond to the N1 Claim...
returned to the court, the court will...
parties. The court will use the...
onnaire to decide which track the...
t will provide 'directions', in other...
do and by when. It is important to...
alty may be imposed, or the case

There are matters to be dealt with...
preliminary hearing at which further...
the hearing date can be made...
Preparation of Preliminary Hearing

Directions that should be made at the...
court asking the court to make such...
There would usually be an exchange...
requesting and agreeing to proposed...
be sent to the court with a request...
Letter – Proposal for Directions

Close documents that are relevant...
of documents on the other party...
the party relies on and documents...
other party is entitled to inspect any...
Request to Defendant for Copies of

Before trial, this should be confirmed in...
correspondence should be sent to the...
Confirming Discontinuation of Court

Order will be sent to the parties...
Given. Occasionally, a case may be...
based on the papers before them),

Order will order the debtor to pay the...
requesting payment and reminding the...
Letter – Request for Payment after

Should firstly check to see that the...
about the customer's finances, the...
that the debtor (or an officer of the

debtor company) attach to the creditor's financial standing. The creditor can use Form N316 (for an individual debtor) or Form N316A (for a company debtor).

- *Form N316 – County Court Form for Questioning Individual Debtor (TR.D&C.02.08A3)*
- *Form N316A – County Court Form for Questioning Corporate Debtor (TR.D&C.02.08A4)*

g. This will establish the debtor's financial standing on Form N316 (for an individual debtor) or Form N316A (for a company debtor). See:

- *Form N316 – County Court Form for Questioning Individual Debtor (TR.D&C.02.08A3)*
- *Form N316A – County Court Form for Questioning Corporate Debtor (TR.D&C.02.08A4)*

7.3 Enforcement of a county court judgment

Once the debtor's circumstances are known, it's worth applying to the court to decide which one will be the best method for the creditor to commence a claim.

The next step is to decide whether to apply for enforcement orders described below, and which one will be the best method for the creditor to commence a claim. A further fee will be payable to the court.

(i) Warrant of Control

Property

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

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A Warrant of Control can be obtained by paper application or by online application (see *Form N323 – County Court Form for Requesting Warrant of Control (TR.D&C.02.08A3)*).

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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.

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An application for such an order is made on *Form N337 – County Court Form for Attachment of Earnings Order (TR.D&C.02.08A4)*.

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(iii) Third Party Debt Order

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 the account of a third party and pays the money owed to the creditor from the account.

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An application for such an order is made on *Form N349 – County Court Form for Third Party Debt Order (TR.D&C.02.08A5)*.

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Issuing a Statutory Demand – the process

If the customer is solvent, and the debt is greater than £750, the creditor can issue a statutory demand. A statutory demand gives the debtor 21 days warning to pay the debt.

If the debtor does not respond to the statutory demand, 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.

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 be used to obtain a court judgment. Issuing a statutory demand is effective for a number of reasons:

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

In theory, if the debtor does not respond to the statutory demand, the creditor can apply to the court with a bankruptcy petition (for individuals and sole traders) or a winding-up petition (for companies). However, this may still not result in the creditor being paid! Unfortunately, if the debtor does not get the court judgment, the creditor will not get 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 creditor's proceedings. If there is any dispute about the sum of the debt, the court will set the statutory demand 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.

We offer a range of Statutory Demand services to help you recover your debt.

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Form	Debtor's legal status	Debt	Next step
Form 4.1	Registered or unregistered company	liquidated	Winding-up Petition
Form 6.1	Sole trader / individual		Bankruptcy Petition
Form 6.2	Sole trader / individual	where the debtor obtained a credit limit.	Bankruptcy Petition
Form 6.3	Sole trader / individual	e.g. the debt is due, but the debtor is in prospect of the debt	Bankruptcy Petition