

A guide to debt recovery through a county court for small businesses

1. Introduction

This leaflet covers the sort of things to bear in mind when considering going to court. You can issue a claim on-line too by visiting www.moneyclaim.gov.uk. If you need help filling in the forms you can call the helpline on 0845 6015935 or get help from any court office. You can get information about court procedures and copies of all the forms you may need from our website by visiting www.hmcourts-service.gov.uk. The addresses and telephone numbers of all county courts in your area are listed in the telephone directory under **Courts**. There is also a list of courts available on our website.

The leaflet also explains what you can expect after you have taken court action if your claim is:

- undisputed
- disputed.

Why sue?

You are a company or firm and are owed money. You have tried all your usual ways of recovering a debt without success. As a last resort you think about suing.

This leaflet:

- points out some of the things to bear in mind when taking someone to court; and
- tells you what to expect.

It could help you decide whether court action is right for you.

But before you do anything you should:

- visit the Business Link website at www.businesslink.gov.uk/debt for comprehensive and authoritative information, including an interactive tool, to help you understand the various ways in which you can recover money owed to you. Alternatively, you can speak to a local Business Link adviser on 0845 600 9 006.

Taking someone to court can be an effective method of debt recovery. The procedures are designed to be quick and easy to operate. But if you do decide to go to court, remember:

- find out as much as possible about your customer before you take court action, ie. you will need to provide the court with their full name and full address including postcode;
- find out about court procedures and your responsibilities;
- seek legal advice, where appropriate;
- consider carefully whether you can afford the time and expense; and
- act quickly.

For free legal information, help and advice contact Community Legal Advice on 0845 345 4 345 or www.communitylegaladvice.org.uk.

2. Is the case likely to be disputed?

You must consider whether you are likely to win your claim.

Most claims issued in the county courts by firms or companies are for money owed for work done and/or goods delivered.

These types of claims are often not disputed. This means it can be very straightforward to get a court order for payment (a 'judgment'). The diagram on page 18 shows you just how quickly this can be done.

If you think your customer may dispute your claim or you are not sure whether it is likely to be successful, you may wish to consult a solicitor or a local advice agency. If you are a small firm you can get free legal advice by using the 'Lawyers for your Business' Scheme. You can get more information about this scheme by telephoning 020 7405 9075.

Alternative dispute resolution

You might also like to consider using an alternative dispute resolution procedure before starting the court process. Alternative Dispute Resolution (ADR) schemes are not meant to replace the courts, but they can have advantages over going to court. The advantages include:

- being more flexible;
- solving your problem faster;
- being less stressful; and
- costing you less money.

Mediation is one form of ADR and it may be helpful in finding a solution to a dispute where you have an interest in maintaining a long-standing relationship with a person or organisation.

You can find out more about mediation by contacting the National Mediation Helpline on 0845 60 30 809 or by visiting the website on www.nationalmediationhelpline.com.

3. Will I get my money?

Weigh up carefully whether going to court is likely to get you your money. It is important to remember that the court cannot help if your customer has no money, assets or anything else of value.

If your customer is a limited company, you should bear in mind that there may not be any assets in the company's own name. This may not stop you obtaining judgment, but it may make it difficult if you need to take further action to make your customer pay.

What if my customer has other judgments?

If there are already court judgments against your customer, it may be less likely that your debt will be paid.

You can find out if an individual or a company at a particular address has unsatisfied (unpaid) court judgments against them by searching the Register of Judgments, Orders and Fines. There is a small fee for this.

You can get further information about searching the Register from Registry Trust Ltd, 173-175 Cleveland Street, London W1T 6QR (telephone 020 7380 0133), or by visiting www.trustonline.org.uk.

Remember, you can search the Register for information at any time, for example, when deciding whether to give credit in the first place. You do not have to be thinking about court action before you do this.

4. Can I afford the time?

Before taking court action, think about the amount of time you can afford to spend pursuing the debt.

If the claim is not disputed, it should be quite quick and straightforward to issue a claim form and obtain judgment. You can issue the claim form in the county court most convenient to you or online at www.moneyclaim.gov.uk. And you can usually deal with the court by post or telephone. If you issued your claim online, you can correspond via e-mail. But you will still need to spend time taking your claim forward (for example, by filling in forms and telling the court what to do next) and you may have to pay additional fees.

It will be more time consuming if your claim is disputed, or you need to enforce the judgment because your customer still does not pay. If your claim is disputed you may need to go to a court hearing.

Remember, it is your responsibility to tell the court how you wish to proceed with your claim. In most circumstances, the court cannot act of its own accord.

5. Can I afford the expense?

You may not need to use a solicitor. But you will have to pay the court a fee for issuing the claim form and further fees will be payable if your claim is disputed. You will also have to pay fees if you need to enforce the judgment. If you obtain judgment, any fees you pay will usually be added to the debt owed.

You can get a leaflet with details of current fees from any county court office or from our website at www.hmcourts-service.gov.uk.

Remember that, as with the debt, there is no guarantee that you will recover the court fees.

Remember too, that there could be more expense if your claim is disputed.

6. What if my claim is disputed?

If your claim is disputed, it was for a fixed amount and your customer is an individual who resides or carries on business in another court's area the claim will be transferred to your customer's local court for the hearing.

If your customer is a limited company and you think that your customer may dispute your claim, remember that you do not have to sue the company at its registered office. It may be more convenient to sue the company at its place of business (such as the shop or local office).

Even if your claim is transferred, you can ask for it to be transferred back to the court where you issued the claim form (or to another court) if you have good reasons. You may have to pay a fee for this. You should not have to attend court for your request to be dealt with.

7. Can I claim interest on the debt?

You may also be able to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998 (see page 9).

You may be able to claim interest from the date payment was due to the date of judgment (even if your contract with your customer does not include interest). This is allowed by the rules of the court and is called 'statutory interest'.

If you obtain judgment for £5,000 or more you may be entitled to interest on the judgment.

For further information on Statutory Interest, please see the leaflet **EX302 - How to make a claim**, and is available free from any county court or by visiting our website at www.hmcourts-service.gov.uk.

8. What is the Late Payment Act?

The Late Payment of Commercial Debts (Interest) Act 1998 gives all businesses, irrespective of size, and public sector bodies, a statutory right to claim interest on late payment of commercial debts. For full information on the Act, please see the guide available from the DTI publications Orderline (URL 02/883), which is available free of charge. It is also available if you visit www.payontime.co.uk.

How can the Late Payment Act help businesses?

It can help in three ways:

1. where no right to contractual interest exists, the Late Payment Act provides businesses with the legal right to claim interest on commercial debts that are paid late;
2. it can allow suppliers to claim an amount of compensation for reasonable debt costs, unless the supplier is at fault; and
3. it can allow suppliers to challenge contracts that are imposed upon them which do not provide a substantial remedy for late payment. Appropriate representatives can be assigned to do this. (If you are an SME)

Can all businesses use this legislation?

All businesses and public sector bodies can use the amended and supplemented act for late payments that arise from commercial contracts agreed on or after 7th August 2002.

What is a commercial debt?

A commercial debt is a debt that results from a contract made between all businesses and public sector bodies, for a supply of goods or services. From the 7th August 2002, all businesses, irrespective of their size, can claim late payment interest. In the contract, either party may be a registered company, sole-trader, public organisation, partnership, trust, body corporate or other legal entity, so long as both are engaged in business activity via a contract (contracts with consumers are not covered by the Late Payment Act).

Does the Late Payment Act apply to any size of debt?

Yes. Compensation and interest for late payment accrue on unpaid commercial debts of any value, unless contractual interest has been agreed.

If you are issuing your claim online via www.moneyclaim.gov.uk, there is a limit of £100,000. If your claim is above that, you will need to issue your claim personally at the county court.

Can I challenge a contract that does not provide a substantial remedy for late payment?

Yes. If you are a small or medium sized business (SME), a representative body may go to court on your behalf.

As this can be more complicated than a straightforward claim for money, you are advised to seek legal advice before you issue the claim form.

Can I include more than one type of interest, in my claim to the court?

No. Any claim made to the court can only contain a request for one kind of interest.

If the claim is for unpaid contractual or late payment interest, then no additional interest may be added to the claim before judgement.

If you need help deciding whether you are able to use the Late Payment Act, you may wish to seek further advice.

How should I include late payment interest in my claim?

Details of the claim for late payment interest must be included in the particulars of claim, and worded as follows:

“The claimant claims interest under the Late Payment of Commercial Debts (Interest) Act 1998 at the rate of [the reference rate for the six month period in which your debt became late (the official dealing rate of the Bank of England on either 30th June or 31st December + 8%)] from [the date when interest started to run] to [the date you are issuing the claim] in the sum of £[put in amount] and continuing at the same rate up to the date of judgment or earlier payment at the daily rate of [enter the daily rate of interest].”

How should I include compensation arising from late payment in my claim?

Leaflet EX302 provides further information on how to issue a claim form in court.

Full details on how to work out the interest rate on a late payment, is available in the User's guide to late payment legislation (Ref. URL 02/883) available from the DTI Publications Orderline. It is also available if you visit www.payonline.co.uk

A demand for compensation arising from late payment must be included in the particulars of claim, and worded as follows:

“The claimant claims compensation arising from late payment under section 5A of the Late Payment of Commercial Debts (Interest) Act 1998. Under the table of compensation set out in this provision, £[enter amount of compensation] is owed.”

The table below shows how much compensation you are entitled to.

| Size of the unpaid principal debt | To be paid to the creditor |
|-----------------------------------|----------------------------|
| Up to £999.99 | £40 |
| £1,000 to £9,999.99 | £70 |
| £10,000 or more | £100 |

9. Can I claim interest after judgment?

You can only claim late payment or contractual interest on unpaid commercial debts from the date that the interest began accruing until the date that judgment is obtained.

However,

- where late payment interest has been claimed in the claim form, or
- when a claim for contractual interest has been included in the claim form and the business taking proceedings would otherwise have been able to claim late payment interest;

then you can claim further interest at the judgment debt rate (currently 8%) from the date of the judgment until the date that enforcement proceedings are issued (for example, a warrant of execution).

Remember that the longer a debt remains unpaid, the greater the chance it may never be paid. Even so, many creditors are slow to take action, particularly if the bad payer is a major customer. If you decide that going to court could help you recover your debt, you should act quickly.

10. What happens if my claim is not disputed?

If the claim is not disputed (as is the case with most business debts), you can obtain judgment and take enforcement action if necessary, without the help of a solicitor. You will not usually need to go to court for a hearing.

The diagram on page 18 shows the basic steps from issue of the claim form to obtaining judgment where your customer either:

- admits the claim; or
- does not reply to the claim form.

If your claim was issued via Money Claim Online, you can request a judgment by default, admission or a warrant of execution to be issued online.

Most of the steps can be dealt with through the post or on-line. For example, if your customer does not reply to the claim form you can ask for the judgment 'by default' simply by filling in the form sent to you by the court when the claim form was issued (the notice of issue), and if you know your customer's date of birth the court will ask you to supply this when requesting judgment by default.

Your customer may admit the claim but ask for time to pay or to pay by instalments. You can write to the court and object if you do not agree, but the court will not make an order for more than it considers your customer can afford.

Leaflets - **EX304 - No reply to my claim form - what should I do?** and **EX309 - The defendant admits my claim** - can be obtained from any county court office or by visiting our website at www.hmcourts-service.gov.uk

11. What happens if my claim is disputed?

You and the defendant will be asked to complete an allocation questionnaire. You will also have to pay a fee if the amount claimed exceeds £1,000. The court uses this information to allocate your case to the appropriate track for your claim. There are three tracks:

- the small claims track (usually for claims under £5,000);
- the fast track (usually for claims between £5,000 and £25,000); and
- the multi-track (usually for claims over £25,000 or more complicated claims).

Each track offers a different way of handling claims, taking into account things like their value (the amount of money or damages being claimed), the claim's complexity (the amount of evidence needed, the number of parties and witnesses), and the need for expert reports.

Your claim will be given a hearing (or trial) date and you will be told what to do to prepare for that hearing.

Leaflets on what happens when a claim is disputed and the three tracks are available from any county court office or from the website www.hmcourts-service.gov.uk

Even though your claim is now in the court process, it is not too late to consider alternative ways of resolving your dispute. HMCS offers a range of mediation services. Leaflets **EX305 – The fast and multi-track** – and **EX307 – The small claims track** – explain more about the options available.

12. What happens if my customer still does not pay?

The judgment orders your customer to pay direct to you. This means that you will know quickly whether you need to consider further action (enforcement) to try to get your money.

Before taking further steps you will need to consider:

- which method of enforcement to ask the court to use; and
- whether enforcement is likely to be worthwhile.

You can get more information about enforcement procedures and the forms you need from any county court office or from the website www.hmcourts-service.gov.uk

Remember, it is important to act quickly if your customer does not pay. But remember also that:

- the court can only take steps to enforce a debt on your instructions;
- you must give the court the information it needs (such as your customer's address); and
- you will need to pay further fees.

13. Can I get help in deciding whether to enforce the judgment?

If your customer admitted the claim and made an offer to pay before judgment, you may already know something about your customer's finances. This may help you to decide whether enforcement action is likely to be worthwhile.

If you know little or nothing, you can ask the court for an 'order to obtain information from the judgment debtor'. This is not a method of enforcement and it will not force your customer to pay. But it is a way of questioning your customer about income or turnover, assets and outgoings.

If your customer is a limited company and you know the name of one of its directors or other officer, you can find out about the company's assets by asking for an order to obtain information from a director or other officer of the company. Alternatively, a search of the Register (see page 6) may help you to decide whether enforcement is likely to be worthwhile.

Remember, whatever information you find out:

- the court will not be able to get your money if your customer has none and/or nothing else of value;
- it may be difficult to enforce a judgment against a limited company as you can only claim against assets owned directly by the company itself.

If your customer is a limited company and seems unlikely to be able to pay the judgment quite quickly (say, in three months), this may be an indication of cashflow problems. In these circumstances, you may wish to consider **winding up (Insolvency) proceedings**. However, these procedures can be complex and expensive and you should seek legal advice before doing so.

What happens after I issue my claim form?

