

BENNETT GRIFFIN GUIDE TO DEBT RECOVERY

Letters Before Action

It is generally necessary to send a letter before action before proceedings are issued. The letter should contain details of the debt and where available, copies of any outstanding invoices should be attached. The letter should also make it clear what action will follow if payment remains outstanding and give the debtor a set amount of time in which to pay, usually seven days.

A solicitor's letter can still be surprisingly effective in prompting payment. We offer this service for a fixed fee of £10.00 plus VAT. Commission of 12% plus VAT is only payable if the debt is successfully recovered.

Court Proceedings

We always agree with each client the approach they would prefer us to take with their debtors. Some of our larger clients are happy for us to control the process entirely, from the moment we receive the instruction through to proceedings and enforcement. Others prefer us to consult with them at each stage, for example the expiry of the time given for payment in a letter before action, entry of Judgment etc for them to confirm that they have not received payment direct and give specific instructions.

Once the claim has been issued by the court, it is served on the debtor who has fourteen days in which to either pay, admit the debt, enter a defence alone or enter a defence with a counterclaim. The debtor must do one of these things within the fourteen days, although he may simply acknowledge service within the fourteen day period, if he requires further time in which to formulate a defence which then allows him a further fourteen days in which to file and serve his defence.

If the debtor does nothing, the creditor is entitled to apply for Judgment in Default.

Enforcement

If following Judgment, the debtor still does not pay, the creditor is entitled to apply for enforcement action. There is a Court fee payable in each case and the main enforcement options are as follows:-

County Court Bailiff or High Court Enforcement Officer

In either of these cases, the officer is instructed to attend the debtor's premises to levy execution against his goods. This means that the Sheriff or Bailiff will identify the debtor's goods and require payment of the sum due under the Judgment within a certain period. In the meantime, the goods may not be disposed of. If the Judgment is not paid by the stipulated date, the goods will be removed and sold at public auction to satisfy the Judgment.

There is no minimum limit for instructing the County Court Bailiff but the maximum sum for which he can be used is £5,000.00. There is no minimum or maximum debt level for instructing the High Court Enforcement Officer but if he is instructed for a debt of less than £600.00, no costs will be awarded to the creditor.

Attachment of Earnings

If the debtor is employed, the creditor may ask the court to make an order that a set amount each month should be deducted from the debtor's salary and paid direct to the creditor.

Charging Orders

Most Charging Orders are granted in respect of land and property. If the debtor has an interest in such assets, the creditor can seek an order that it be granted a charge over them, similar to a mortgage. If the court grants that order, the creditor's charge is registered at H M Land Registry and it will then have some security for the Judgment debt. It may also then seek an order that the property be sold so that the Judgment will be paid out of the sale proceeds.

Oral Examination

The debtor is required to attend Court to give a detailed breakdown of his/her finances. If the debtor has investments exceeding the amount of the debt the creditor may apply for a Third Party Debt Order to recover funds directly from a Bank or Building Society.

Bennett Griffin's Debt collection department has an excellent reputation for recovering monies at low cost.

For further information contact Elaine Smith, Partner on 01903 706966 or email es@bennett-griffin.co.uk