

# Commercial Litigation Debt Recovery Guide



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Several businesses are finding themselves in tough times when it comes to collecting outstanding costs. Implementing simple and straightforward procedures at the outset of the client/customer relationship can help you and your business when the time comes to collect your money.

## Know your customer

When dealing with individuals make sure you have all the necessary information. It's much easier to locate an individual when you have their date of birth and national insurance number. When working with Limited Companies ensure you carry out the relevant company searches to ensure their credit worthiness. Whilst they may want to spend money with your business, is a company with a track record of CCJ's really a company you want to work with? Many businesses use the added protection of a Personal Guarantee from a Director of the Company to secure the costs.

All of this information should be requested at the application process of the relationship. Knowledge, after all, is key!

## Terms and conditions

You should also make sure that your terms and conditions are readily available to your customer. Make sure your payment terms are clearly set out so that there is no confusion at a later date as to when payment is expected.

Interest terms for late payment should also be set out in either your terms and conditions or on the actual invoice that is raised for payment. From the 2nd August 2002 the Late Payment of Commercial Interest Act came into force. This allows both smaller and larger businesses to claim interest at the rate of 8% plus base rate from the date payment became due. Whilst some smaller businesses may be reluctant to charge the higher rate in fear of upsetting the customer, it is more than likely that if the situation were reversed they would find themselves victim to it.

## Payment terms

Every business has its own payment terms. A credit control or recovery process should be in place from the date payment is due. If you follow a 30-day payment term, a telephone call from your Credit Controller to the customer on day 30 can confirm that payment is on its way, or not as the case may be! If you are greeted with an excuse for non-payment then it may depend on your client/customer relationship as to how you continue with the collection process. Some of the favourite answers you may have heard:

*"There is no one available to sign the cheque"*

Ask your customer whose signature is required and when this person will be available. Make a note in your diary to call this person on the date of their return.

*"We're waiting for a new cheque book"*

Ask your customer to make a Bacs payment direct into your account or ask for confirmation from their bank that this is the case.

*"The cheque is in the post"*

Ask your customer for the cheque number, amount and date. Diarise this matter for two days and call back if payment is not received.

*"We only do a payment run once a month and you have missed the cut off point"*

Ask your customer for the date of their payment run for future notice. Make your colleagues aware of the deadlines for payment. They can keep this in mind when invoicing the customer.



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### *"We have no money"*

If you believe this is the case then a monthly payment plan could be agreed. Place the account on hold. Ask for an immediate payment for the initial instalment and monitor how well they respond.

Always be proactive, firm and polite. Remember that people do not like being chased for payment.

What to do if payment is not received? If payment is not received you then have to take a view on how you wish to proceed to collect your outstanding costs. Most companies have a series of two to three letters that they send themselves before passing the matter over for legal proceedings.

## **Legal proceedings**

Once you have instructed a solicitor or debt recovery specialist, the standard procedure for collection is set out in the following steps:

1. A letter before action will be sent on your behalf
2. If no response is received within the stipulated time a Claim form will be issued against the Debtor claiming monies due plus costs and interest to date
3. If no response is received after 14 days from the date the claim was served you can enter Judgment in default against the Debtor
4. Once you are in receipt of the sealed Judgment Order you can decide how you wish to enforce the Judgment

## **Possible enforcements**

Once you have instructed a solicitor or debt recovery specialist, the standard procedure for collection is set out in the following steps:

Possible enforcements options that can be issued are as follows:

1. Issue a Warrant of Execution to the Bailiffs office, normally for debts under £750
2. apply to have the Debtor (or a Director if it's a company) questioned by an officer of the Court about the financial position
3. Apply for an attachment of earning order. This allows the Court to deduct money direct from the Debtors salary via their employer
4. Obtain a Writ of Fi-Fa and instruct the High Court Enforcement Officers to enforce the Writ, normally used for debts over £750
5. Apply for a charging order against a Debtors property to secure your debt; this does not bring forth payment immediately.

## **Larger debts**

For debts of a larger size it is often requested that bankruptcy proceedings are issued against an individual, or winding up proceedings against a company. Both these actions are the strongest method of enforcement to be used in an attempt to recover outstanding costs. Whilst they may bring forth payment, there is no guarantee that this will be the case and the cost implications need to be looked at before you decide to go down either route.



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