

Someone owes you money

An explanatory note

There are two legitimate means of collecting money due to you from a debtor. Each method has advantages and disadvantages. The two methods are:

- Bankruptcy proceedings
- County Court proceedings

Bankruptcy proceedings

Bankruptcy proceedings are not intended to be used for the collection of debts which are in anyway controversial – in other words where the debtor genuinely disputes the debt. The use of bankruptcy proceedings should therefore be confined to situations where the debtor is either unable or unwilling to pay.

The bankruptcy procedure is as follows:

Step One – service of a Statutory Demand

A Statutory Demand is a formal demand for payment.

It takes only a few minutes to complete; but it must be personally served on the debtor so a process server's fee will be incurred. Process server's fees for personal service of a Statutory Demand are usually in the range of £75 to £125.

A debtor may apply to the County Court, within 18 days of service of the Demand, for the Demand to be set aside. If the Demand is set aside then the bankruptcy proceedings can go no further. The grounds upon which the Court can set aside a Statutory Demand are as follows:

- The debt is disputed on grounds which appear genuine
- The debtor has a valid counterclaim or set off equal to or exceeding the value of the debt
- The creditor holds security which exceeds the value of the debt; or
- The Court is otherwise satisfied that the Demand should be set aside

At the conclusion of an application by a debtor to set aside a Statutory Demand the Court will usually order the unsuccessful party to pay the successful party's legal costs in relation to the set aside exercise. Many debtors pay the money they owe in response to the Statutory Demand. Some do not and you may have to proceed to the next step.

Step Two – presentation and hearing of the bankruptcy petition

After 18 days have elapsed from service of the Statutory Demand, and providing that the debtor has not successfully applied to the Court for the Demand to be set aside, a bankruptcy petition may be presented to the Court. Completion of a bankruptcy petition together with the supporting paperwork takes about an hour. A Court fee is payable upon the presentation of the petition. The Court fee is presently £190. In addition a fee is payable to the Official Receivers office of £390.

Like the Statutory Demand, a petition must be personally served on the debtor and there will be process server's fee to pay. A bankruptcy petition is heard by a Judge sitting in the debtor's local County Court. The Hearing usually takes place about six weeks after the petition is presented to the Court. A debtor may resist the making of a Bankruptcy Order even if he has not applied to set aside the Statutory Demand. The debtor will, though, have to demonstrate that there is a genuine dispute in

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relation to the debt or that he has a valid counterclaim. Many debtors attend the Hearing of a bankruptcy petition only to ask for time to pay. The Court will generally adjourn the Hearing of a bankruptcy petition on one or two (but rarely more) occasions if the debtor can demonstrate that, given a little time, he can pay what he owes.

Step Three – the Bankruptcy Order is made. What next?

Upon the making of a Bankruptcy Order all the debtor's assets vest in the Official Receiver in Bankruptcy. The Official Receiver's function is to gather in and sell the debtor's assets and then to divide the proceeds of sale among the creditors.

Special provisions apply to assets a bankrupt owns jointly with someone else, for example a property jointly owned by the debtor and his partner. Secured creditors are paid in full before any money is divided among the unsecured creditors. The petitioning creditor is treated in the same way as all the other creditors in the same class: so, for example, if you are an unsecured creditor you will receive the same dividend (if any) within the bankruptcy proceedings as all the other unsecured creditors.

It is not uncommon for the unsecured creditors to receive nothing – and you will need to consider carefully, before taking bankruptcy proceedings, whether or not the end result is likely to justify the cost you will be put to. As a general rule the threat of bankruptcy proceedings is often sufficient to provoke solvent debtors to pay.

County Court proceedings

If you are owed money by a debtor who disputes the debt, or is likely to dispute the debt, then County Court proceedings are much more appropriate than bankruptcy proceedings. At the conclusion of County Court proceedings a Judge will adjudicate whether or not the debtor owes the sum you claim. Unfortunately, the process of arriving at that adjudication can be, at least in respect of claims with a value of more than £5,000, a very expensive one indeed.

The procedure is as follows:

Step One – a Letter before Action

Sometimes a solicitor's letter requesting payment, and indicating that in default of payment Court proceedings will follow, is sufficient to provoke the debtor to pay. If not, then:

Step Two – commencement of proceedings

A Claim Form is presented to the Court. Completion of a Claim Form typically takes from 15 minutes in straightforward cases to several hours in complex cases. A Court fee is payable upon the presentation of the Claim Form. The Court fee is calculated by reference to a sliding scale depending on the value of the debt. For example:

Where the debt exceeds £500 but not £1,000 the Court fee is £65
Where the debt exceeds £5,000 but not £15,000 the Court fee is £225
Where the debt exceeds £50,000 but not £100,000 the Court fee is £630

A debtor must respond to a Claim Form within 14 days. Some debtors fail to respond within the time allowed. In those circumstances the Court will enter (upon request) what is known as a Judgment in Default. A Judgment is, in effect, a certificate from the Court that the debtor owes you the sum you claimed. The Judgment will direct the debtor to pay the Judgment debt by a specified date. In default of payment there are steps you can take to enforce payment – but that is beyond the scope of this brief note. You should not, however assume that every County Court Judgment (“CCJ” for short) is satisfied. Many are not.

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Debtors who do respond, though, will either:

- admit the debt – and then typically make some offer to pay by instalments; You will be asked whether or not you accept the debtors instalment proposal. If you do not then the Court will adjudicate; or
- deny the debt; in which case the debtor must set out, in a document called a Defence, the reasons why.

Step Three – defended claims

Defended claims are allocated to a track. Claims with a value of less than £5,000 are generally allocated to the small claims track. Claims with a value of £5,000 to £25,000 are generally allocated to the fast track and claims with a value of more than £25,000 are generally allocated to the multi track.

Small claims track cases are dealt with by the Court according to a simplified procedure intended to be operated by litigants without the need to employ solicitors. Typically, therefore, upon receipt of a Defence to a claim with a small claims track value we will pass the file back to you so that you can conduct the Final Hearing yourself. If you would like us to conduct the Final Hearing we will be happy to do that and will generally provide you with a fixed fee proposal; but you must bear in mind that the unsuccessful party is very rarely ordered to make any contribution to the successful party's legal costs.

The “no costs” rule is reversed on both the fast track and the multi track. On these two tracks the unsuccessful party generally has to bear not only his own legal costs but also those of his opponent. Costs on these two tracks can become very expensive indeed. Contested fast track and multi track cases are outside the scope of this brief note. In these cases, we will provide you with individual fee estimates, as best we can.