

Our

10 Top Tips

for

Debt Recovery



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Debt Recovery

Disputes are an unwelcome part of life. Distracting, at best; Draining, at worst.

While high-value, complex and costly disputes are well-known for the challenges they present, there can be real issues at the other end of the scale too.

Small claims – defined as money claims worth less than £10,000 – can present their own problems for individuals and businesses.

Here's our guide to debt recovery.



01

What is the process for recovering the debt I am owed?

If you are owed money then you may have to go through a process of asking for it nicely, demanding it, and then getting the court to help you recover it. There are different mechanisms for bringing civil claims.

If you are owed less than £10,000 and are just asking to be paid the money, and are not looking for some other remedy, then the Small Claims Track is for you.

If you are owed more than £10,000, then depending on the overall value of your claim, you will need to use either the Fast Track or the Multi Track. Unfortunately these names have no bearing on the speed at which the court will process your claim however they will determine the steps that you will need to undertake in order to see your claim through to a successful conclusion.

At Eric Robinson Solicitors we can advise you at each and every step of the debt recovery process whether that be at the initial stages only; advising on the legal basis of a claim, giving guidance on drafting claims and defences, helping with strategy and process, or providing representation in court.

02

Who should I be pursuing for the debt?

The person bringing the claim is the “claimant”. The other party is the “defendant”. Sometimes there can be more than one defendant, and it is really important to think very carefully about this before issuing a claim. Make sure you are suing the right person and that you include everyone you should. Companies often have trading names which are different to their official legal names (and it is the legal name you’ll need to set out in the paperwork). So you will need to search Companies House to get these details right on your Claim Form.

Also, although you may think that your debt is owed by an individual, think about whether that person has been acting in their capacity as a director of a company. If they have been, then perhaps it is the company, rather than the individual, that is the proper defendant.

All names and contact details given in your Claim Form need to be correct. Once you send your claim form to the court, it will then be issued to the person at the address you have specified – so it is critical that the information you give is right. The court will also need your name and address to be correct so that it can be sure that you are the right claimant, and so that you can receive important correspondence.

03

What can I claim for?

You will need to state on your Claim Form the specific amount of money you say the defendant owes you, and why. Sometimes this will be obvious. Other times, you will need to do some calculations to work out your actual losses. You will also need to take account of rules on what can and can't be recovered. For example, where you have provided services to another company and your invoice hasn't been paid, any VAT included in that invoice should be claimed from the defendant as well. However, if you had been promised the opportunity to provide services but had not actually done so, your claim would be for the loss of profits alone (no VAT).

04

When is the appropriate time to start a claim?

Not too soon and not too late. Helpful? In all seriousness, judging when to issue a claim can be tricky. Because court proceedings should always be the last resort, you will need to

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make sure that you have tried as hard as you can to get your opponent to pay up before issuing a claim. That means talking to them, writing to them, and making sure they know exactly what you say they owe.

The Court will always encourage parties to set out their claim in writing and give the other a proper opportunity to respond before starting legal action. Share information and disclose any relevant documents before issuing your claim – it could help bring matters to a close. Also explore Alternative Dispute Resolution methods like mediation which involve impartial third parties working with you to resolve the dispute.

Take a look at the 'Practice Direction on Pre-Action Conduct' before you start Court proceedings – you will need to comply with it. Remember too, that strict time limits apply to issuing claims and so you will need to carefully check the deadline for yours.

05

Where do I issue the claim?

You will start your claim by filling in an N1 Claim Form. You should be able to pick one up from your local county court or download it via the Ministry of Justice website. You will also find a service called Money Claims Online that allows you to issue a claim via its website.

A fee will be payable when you issue the claim, and further fees kick in as the claim progresses. The Court fee for starting claims through the Money Claim Online service is lower than the paper-based version.



06

What do I need to specify within my claim?

The Claim Form will ask you to summarise what you are owed and why. This is known as the Particulars of Claim. Remember that the court has no background information about you, your business or circumstances and so will rely entirely on the information you give here. Setting out your claim logically and coherently will improve your chances of success. For example, if you believe that there was a contract for you to provide services to the defendant, make sure to specify:

- how that contract was formed
- which terms of the contract you are relying on
- how you believe you have fulfilled your obligations under the contract
- how the defendant has failed to fulfil their obligations.

It is not enough just to say that you have an unpaid invoice. You need to be clear about why you believe that the defendant should pay that invoice.

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07

Does my case need to be properly presented?

Every communication you have with the court – from your Claim Form, to your letters, to the way you present your case – is a reflection on you and your claim. The best types of claims are those which are expressed clearly, in a business-like and professional style.

The dispute may be personal, and you are likely to be frustrated, but the court is looking at the legal merits of your claim and not at what a dreadful person you say the defendant is. It really pays to understand the legal basis of your claim, what you need to prove and to stick to the point. Judges have a fair degree of patience and understanding but the more focused you remain on what really matters, the easier the ride will be.

08

What happens after you have issued your claim?

Once the court has sent the defendant your Claim Form, you will need to wait for a response. There are four ways this could go. The first is that you hear nothing within the 14 day timescale; if that happens you can apply to the court for a judgment against the defendant which means they will be forced to pay up. The second possibility is that the defendant files an “Acknowledgement of Service” within 14 days and they then have another 14 days in which to file a Defence. The third possibility is that they confirm that they will accept all or some of your claim. The final possible course of action is that they file a Defence at court. That is a brief explanation of why they dispute your claim.

If the defendant files a Defence, it is a good idea to consult a solicitor to advise on the process and ways of winning your claim. The court will ask you to do certain things – like file witness statements - at certain times before the final hearing, and it is important to meet these deadlines. You will have some say in these steps by completing a “Directions Questionnaire”.

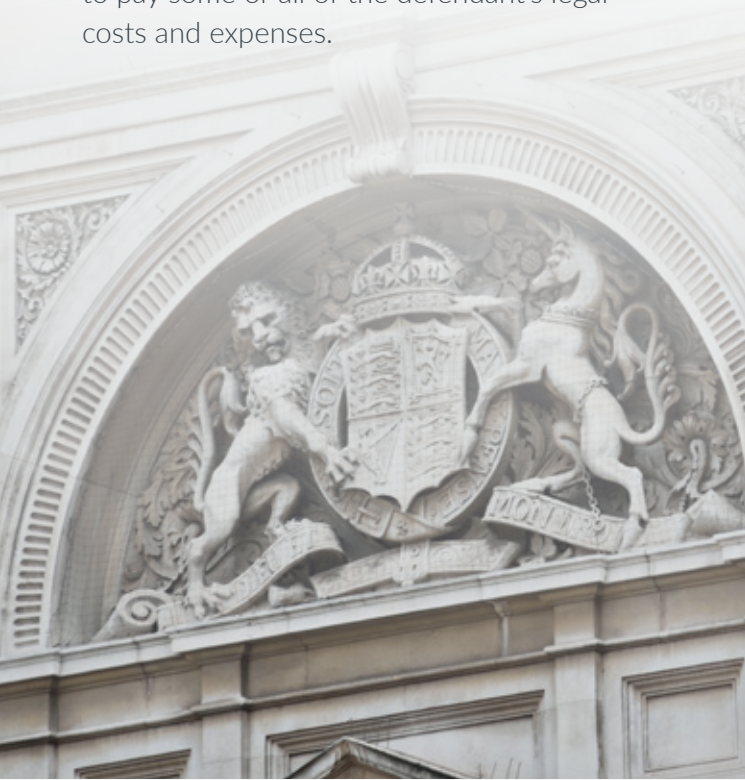
Depending on how the defendant has responded to your Claim Form, the court may grant your claim in full or set a date for a hearing, at which you and the defendant may be asked to give evidence and put your case forward.

09

Can I claim for my legal costs and expenses?

If you win your claim, the judge will make an official order that the defendant must pay you a certain amount of money within a certain time period, often one month. This amount can include your legal costs and expenses such as your court fees, reasonable travelling expenses, the cost of staying overnight if relevant, and up to £90 for loss of earnings if you had to take time off to attend court.

If you lose your claim, you may be ordered to pay some or all of the defendant's legal costs and expenses.



10

What happens if the judgement debt is not paid?

Winning your claim doesn't necessarily mean you will see your money.

The defendant might refuse, or be unable, to pay. If that happens then you will need to decide whether to pursue this further or to write off the debt. That decision usually hinges on cost. Forcing someone to hand over money can be difficult and expensive, but you might feel it is worth it if you are owed a significant amount of money or you are happy to pay out of principle. But if the defendant hasn't actually got the money to pay you, it may be that there's little point taking things any further.

This is the sort of issue we will be able to help with; our dispute resolution lawyers are used to advising on situations in which debtors are reluctant or unable to pay. Talk to us about our debt recovery service.

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Talk to one of our advisors to find out more:

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