

Making a Court Claim to Recover an Unpaid Debt

Business Information Factsheet

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Introduction

Many small businesses experience payment disputes, in which a customer refuses to pay for goods or services that have been provided. An unpaid debt can affect cash flow and make it difficult for a business to pay its suppliers. In more significant cases, it can affect the ability of a business to continue to trade.

This factsheet provides information about how to recover an unpaid debt by making a court claim.

The factsheet is a starting point only. It is important to take appropriate advice before making a court claim. Other forms of debt recovery, such as mediation and arbitration, may be quicker and cheaper than going to court.

Before making a court claim

Courts expect a business to make reasonable efforts to reach an agreement for payment with a debtor before beginning court proceedings.

'Reasonable efforts' include, for example:

- Taking steps to explain the position to the debtor, understand their situation and seek to negotiate a settlement with them.
- If payment is still not made, sending the debtor a letter (known as a 'letter before action' or a 'letter of claim'), asking them to pay the invoice as soon as possible and stating the steps that will be taken if payment is not received within a certain number of days.
- Considering whether to use a form of alternative dispute resolution (ADR), such as mediation or arbitration.

The precise procedures that businesses are expected to follow vary across the UK. For example, before making a claim for payment against an individual (including a sole trader), businesses in England and Wales must follow the Pre-Action Protocol for Debt Claims (www.justice.gov.uk/documents/debt-pap.pdf).

Before making a claim, it is also important to consider whether or not it will be worthwhile. Typical costs associated with making a claim include court fees, legal fees, experts' fees and travel expenses. Even if a claim is successful, there is no guarantee that the debt will be paid.

How to make a claim

In order to make a claim, claimants must complete a claim form, either on paper or online. The claim process differs slightly across the UK, as follows:

- **England and Wales:** Most claims can be made online. The fee varies according to the amount of the claim, starting at £35 for a claim of up to £300 and rising to £455 for debts between £5,000 and £10,000. For more information, and to start a claim, go to www.gov.uk/make-court-claim-for-money/make-claim.
- **Scotland:** Court claims for up to £5,000 are made online using the 'simple procedure', which is designed to provide a quick and inexpensive way to resolve disputes. More complex claims, and claims for more than £5,000, must be made using the 'ordinary cause' procedure, which involves applying in writing to a sheriff court. For more information, go to www.mygov.scot/court-claim-money.
- **Northern Ireland:** Court claims for up to £5,000 are made online using the Small Claims Service. Claims for more than £5,000 must be made by applying to a county court (for amounts up to £30,000) or to the High Court (for amounts over £30,000). For more information, go to www.nibusinessinfo.co.uk/content/choosing-right-legal-route-your-debt-claim.

The court process

Once a court has processed the claim, a copy is sent to the debtor, who then has a set period of time to respond, either by agreeing to pay the debt or by disputing the claim.

If the debtor disputes the claim, the court may arrange for the claimant to use the court's free mediation service to reach an agreement with the debtor. If mediation is unsuccessful, the dispute goes to a court hearing.

After the hearing, the judge issues an order based on the evidence provided by both parties. Both the claimant and the debtor can request permission to appeal against the decision.

Enforcement of court orders

When a court issues a payment order but the debtor still does not pay, the claimant can generally ask the court to enforce the order. However, the claimant will be required to pay additional court fees.

For more information about enforcement of court orders, go to:

- **England and Wales:** www.gov.uk/make-court-claim-for-money/enforce-a-judgment.

- **Scotland:** www.scotcourts.gov.uk/taking-action/simple-procedure/enforcement-of-the-decision.
- **Northern Ireland:** www.nibusinessinfo.co.uk/content/enforcement-civil-court-orders-northern-ireland.

Useful resources

'Make a Court Claim for Money' (England and Wales)

GOV.UK

www.gov.uk/make-court-claim-for-money

'Make a Court Claim for Money' (Scotland)

mygov.scot

www.mygov.scot/court-claim-money

'Recover Debts Owed to You' (Northern Ireland)

nidirect

www.nidirect.gov.uk/articles/recover-debts-owed-you

'Legal Action You Can Take'

Small Business Commissioner

www.smallbusinesscommissioner.gov.uk/deal-with-an-unpaid-invoice/get-advice/legal-action-you-can-take

Related factsheets

BIF034 Factoring and Invoice Discounting

BIF171 Bankruptcy Procedures in the UK

BIF422 Credit Control

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