



**MASTER COLLECTIONS**

# Debt Collection in the UK

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## Introduction

The author of this guide Carlo Pegna is the Legal and Operations Manager of Master Collections. Carlo is a Legal Executive with 10 years experience in debt collection. He has worked in Private Practice and in-house Credit Control departments.

More and more businesses rely on credit to operate. For example through favourable credit terms with their suppliers Tesco produce excellent balance sheets. This is how credit can work to a business advantage. But if your business has no credit control mechanisms in place your cash flow will suffer.

Admittedly you have the choice of factoring your invoices on the basis that a Factoring agent covers the invoice value and takes a cut from the cash collected. But Factoring agents only take on current debt. So why let a Factoring agent take a slice from your business when through effective credit control you can maintain a steady cash-flow. While it is prudent to refer aged debt to solicitors and debt collectors for collection the same cannot be said for current debt.

This guide will show you how to set up a Debt Collection infrastructure and implement effective Credit Control mechanisms. The guide is split into 2 sections:-

1. Pre – Legal Collections; and
2. Legal Collections.

The former section will teach you how to minimise bad debt and be sure that very little is referred to Legal action. The latter section will introduce you to English legal procedure basics and its relevance to Debt Collection.

# Chapter 1

## PRE-LEGAL COLLECTIONS

### 1.1 How to set up a Debt Collection Infrastructure

The first and most obvious point to consider is the nature of your business. For example a restaurant owner rarely offers credit and therefore does not need a debt collection infrastructure. Whereas a supplier of leather bags may have to offer credit to business customers because its accepted in the industry.

Whether you offer credit or not will largely be based on whether it is widely accepted and the nature of your business. Therefore customers expect it of you and if you do not offer it they will take their business elsewhere.

Now that you have decided whether you offer credit you need to implement a Debt Collection Infrastructure.

### 1.2 The Debt Collection Infrastructure

Below are the 5 recommended building blocks of the Debt Collection Infrastructure:-

1. Terms and Conditions.
2. Credit Rules.
3. Collection Process.
4. Insolvency Process.
5. Bad Debt Write Off Process.

#### 1.2.1 Terms and Conditions

Do not make the mistake of offering credit without first inviting your customers to sign acceptance of your terms and conditions. You don't necessarily need to have a set of lengthy terms and conditions. It is sufficient that the essential terms are set out in an Order and Acceptance form. However please note that if you are offering a loan for less than £25,000 you can only do so if you have a Consumer Credit License and you have invited the borrower to sign a Consumer Credit agreement. Except for Consumer Credit agreements the following terms are considered essential:-

- (i) All Monies Clause.
- (ii) Late Payment conditions.
- (iii) Credit time and Limit.
- (iv) Termination clause.
- (v) Limitation of Liability and dispute conditions.

### **1.2.1.1 All Monies Clause**

If you are offering credit in relation to the supply of goods this will safeguard you from exposure to loss resulting from a customer's insolvency. The clause specifies that you own the goods until such time that you receive full payment in relation to the goods and/or any other goods supplied. Alternatively if credit is offered in relation to services linked to the customers goods that you have in your possession, then a Lien is recommended. A Lien is a right to hold the customers goods and charge storage until such time that your invoices are paid. Subject to certain provisos you may sell the goods if storage charges are unpaid for 3 months or over.

### **1.2.1.2 Late Payment Conditions**

Why should your cash flow suffer because your clients never pay you on time? They should be disciplined and you should benefit from their late payment. Therefore it is recommended that you introduce late payment conditions. For example you could charge your customers 10% interest for late payment. Alternatively you could be silent and providing it is a business to business transaction the customer will be required to pay 8% above the bank of England base rate (see Late Payment of Commercial Debts (Interest) Act 1998).

### **1.2.1.3 Credit Time and Limit**

It is essential that you define the credit time and if applicable the limit. For example for business-to-business transactions in the UK 30 day credit terms are common. If you have also agreed a credit limit with the customer then subject to Credit Checks you should incorporate the credit limit, i.e. £5,000.

### **1.2.1.4 Termination Clause**

In business to consumer contracts involving sales from a distance, i.e. over the television, e-mail or telephone, the consumer has cancellation rights that can vary from 7 days to 3 months. If you are involved in distance selling to consumers and are not sure how the Distance Selling Regulations apply to you please consult your local Trading Standards Office. Subject to these compliance points you should state that the contract cannot be terminated. Alternatively set termination rules for example notice of termination must be received in writing within a certain period of time, i.e. 30 days prior to delivery. Better still you can introduce termination penalties that vary dependant on the amount of notice received, i.e. 20% of the contract price for 30 days notice, 10% of the contract price for 60 days notice. Admittedly the wording of your termination clause will depend on the nature of the transaction and content, i.e. goods supplied or services, if so are the goods awaiting delivery or services awaiting completion.

For business-to-business transactions you can be stricter with the wording of your termination clause. Indeed it is easier to enforce a clause stating, 'the buyer has no right of cancellation if the goods are not delivered and works completed on time'.

Of-course there are circumstances where it is beneficial to the supplier to terminate the contract. For example if and when the customer becomes insolvent. Your terms and conditions should have a clause similar to the one below:-

'Either party may forthwith terminate this Agreement if that other party has a bankruptcy order made against him or it goes into liquidation; and/or that other party makes a voluntary arrangement with his or its creditors or becomes subject to an administrative order within the meaning of the Insolvency Act 1986'

### **1.2.1.5 Limitation of Liability and Dispute Conditions**

There will be some occasions when your customers refuse to pay you because of a query or dispute. Depending on the severity and truth of the query or dispute it should not interfere with your cash flow. Therefore you should explicitly state:-

'The Buyer agrees not to withhold payment on the grounds that they have a claim against the Supplier'

Furthermore you should set out your liability limits. This way you can dismiss queries or claims that go beyond those limits. For example you can state:-

'If the supplier is negligent or in breach of contract or otherwise responsible for causing loss or damage to the Buyer their liability is limited to the value of this Agreement'

Neither do you want to be held liable for circumstance that are in no way associated with the supply of your goods or services. The clause below is recommended;-

'Supplier shall not be liable for loss of use, loss of enjoyment, loss of profit or any other indirect or consequential losses'

Alternatively you may have insurance in place that covers claims by your customers. If so you should incorporate the claims procedure in your terms and conditions. For example claims to be made in writing within a certain time limit with supporting evidence. Depending on the exposure your business has to claims you may even choose to offer the customer insurance to give them more protection. That way they cannot complain if they decline and find that they are not covered by your terms and conditions.

Please note you cannot limit liability for death and personal injury. Limitation of liability clauses are tightly regulated and for this reason it is advisable that you have adequate insurance in place. However this topic is beyond the scope of this guide and it is advised that you speak to your insurance broker to discuss what insurance is appropriate for your business.

### **1.2.2 Credit Rules.**

There is nothing prohibiting you from introducing a rule of discrimination against customers with bad credit. Of course much will depend on whether it is practical to exercise this type of discrimination. For example very few hairdressers will ask their clients to pay before they receive a hair cut. It's just not common practice and unless a top hair stylists most transactions concern small values. In other types of industry however like construction and manufacturing it is common to find transactions worth over £2,500. As a business you want to be sure that you get paid. Therefore it is recommended that you credit check the prospect to ensure they have good credit before you offer your business.

Some prospects may ask that you set up a credit account. In these circumstances it is imperative that you carry out a credit check to decide how much credit you can offer. D & B produce user-friendly credit reports. The report will give a risk indication on a level of 1 – 4. The higher the number the higher the risk. Furthermore the report will also give an indication of how much credit you should permit.

If the prospect has a poor credit rating then depending on the nature of your business demand cash on delivery or a substantial advance/deposit. Alternatively limit the credit you offer.

*continued over...*

*Credit Rules continued...*

Credit checking companies presents no serious complications, but take care that their accounts as published at Companies House may be out of date. The same cannot be said for private individuals because of the Data Protection Act information is difficult to obtain. In these circumstances it is absolutely imperative that you obtain consent from the individual, sole trader or partnership before you carry out a credit check. Some Letting Agents charge customers an administration fee for a credit check. There is no reason why your business cannot take the same approach.

Letting Agents and other businesses that credit check private individuals and/or businesses will first invite the Prospect to complete an application form. The form amongst other things will invite the Prospect to provide details such as current address and previous address, whether they own any property and bank account details. The information will form the basis of a credit check. Indeed when credit checking private individuals or businesses you need to be sure that the information is accurate. Inevitably the accuracy of the information is largely dependent on the accuracy of the details obtained from the private individual or business.

### **1.2.3 Collection Process**

Once you have decided how much time you will allow your customers to settle your invoices you should implement a collection process. Depending on the size of your business and the potential problem of unpaid invoices, you may consider employing a credit controller. The job of the Credit Controller is to see the collection process through.

Here you need to consider how many chase letters to introduce, the wording of the letter, the timing between one letter to the next, whether you will contact the debtor direct by telephone, how you will handle queries and methods of payment.

Be flexible with your payment methods. Do not dismiss credit card payments. Some businesses avoid credit cards because of the surcharge. But you can pass the surcharge onto the customer or even consider covering it if it means it's the only way of settlement. Through my consultancy services I helped a law firm increase their collections by 10% by encouraging rather than discouraging credit card payments. Collections were further increased by reducing the amount of chase letters and the time that elapsed from one letter to the next.

It is recommended that you introduce 2 letters followed by a telephone call and a Final Demand followed by a telephone call. The first letter should be detailed so as to avoid potential queries and make it easier for the Credit Controller to handle the same.

### **1.2.4 Insolvency Process**

It is inevitable that some customers will genuinely be unable to settle your invoices because they have become insolvent. However be certain that they are insolvent and what insolvency type they fall into.

There are approximately 7 major types of insolvency and depending on the type you may or may not get all or part of your invoices settled:-

1. Bankruptcy
2. Debt Relief Order
3. Liquidation
4. Receivership
5. Administration
6. Corporate Voluntary Arrangement
7. Individual Voluntary Arrangement.

*continued over...*

### *Insolvency Process continued...*

The subject of insolvency is very wide and beyond the scope of this guide. From a debt collection perspective it is unlikely that you will recover any money resulting from a Bankruptcy, Debt Relief or Liquidation order. However to secure whatever chance you may have it is crucial that you complete and return the Proof of Debt form sent to you by the Insolvency Practitioner. Depending on the success of the other insolvency types you may recover some or all of your unpaid invoices. Again you will be required to complete a proof of debt form verifying any debts you are owed up to the date of the relevant order.

The difference between the first two insolvency types as against the rest is that the first two dissolve the business or individuals' assets, and the others keep the business trading or retain the individuals assets. The basis of this is a reasonable prospect that with time the business or individual can raise enough money to settle their debts. You therefore may find yourself continuing to honour a supply contract while the business is in Administration, Receivership or subject to a CVA or IVA.

If you continue to supply a business in Administration or Receivership be sure that your invoices are made out to the Administrator or Receiver. In terms of an IVA or CVA there are no crucial invoice changes however it is advisable for your own records that you flag the invoices as IVA or CVA. The reason for this is because the arrangement includes an agreement that all outstanding invoices up to the IVA or CVA date will only be part settled. Full settlement will be determined by the success of the relevant arrangement over a fixed period, usually 2 or 5 years.

#### **1.2.5 Bad Debt Write Off Process**

Depending on the size of your business you may be subject to an audit. Auditors expect to see a process in place that supports bad debt write offs. Furthermore to withstand the scrutiny of HM Customs and Excise and the Inland Revenue it is important that you have a Bad Debt Write Off process in place. Indeed you can set off bad debt write offs as a loss against your income and you can reclaim the VAT paid on invoices you have written off.

The Process will be based on the vetting of the debtor in order to support the write off. Therefore if a debtor has gone into liquidation or become bankrupt you should attach the relevant court order and completed proof of debt form to the file. Alternatively if the debtor is dead then you should attach a Death Certificate to the file.

For gone away debtors you may wish to instruct Trace agents before proceeding to write off the debt. If a negative trace report is obtained then attach the same to the file and write off the debt. If however a positive trace report is obtained then reinstate the collection process.

As you will see later legal costs are irrecoverable for claims up to £5,000. Therefore in view of this you may wish to make a rule that for debts below £400, 9 months old or more and where collection methods have been exhausted you will write off because the costs do not justify legal proceedings.

# Chapter 2

## LEGAL COLLECTIONS

### 2.1.1 How to Issue a Claim

There are 6 fundamental issues to consider before you issue legal proceedings for recovery of an unpaid invoice, and they are:-

1. Limitation.
2. Value of the Debt.
3. Viability.
4. Jurisdiction.
5. Evidence.
6. Likelihood of dispute.
7. Interest.

### 2.1.2 Limitation

Under the Limitation Act 1980 the limitation period in which to issue proceedings for the recovery of a debt arising from a contractual claim is 6 years. Usually this is 6 years from the date of the invoice or if there is no invoice 6 years from the date the breach occurred.

### 2.1.3 Value of the Debt

As we have seen earlier the value of the debt will determine whether you are prepared to invest time and money in its recovery through legal proceedings. Debts below £5,000 are considered small. As a result you are only entitled to recover costs prescribed by the Civil Procedure Rules. However the costs are not much and you may struggle to find a solicitor that will agree to charge on the prescribed basis. For all other claims above £5,000 you are entitled to recover legal costs.

If you wish to issue a Small Claim yourself then please refer to Her Majesty's Court service website where you can download useful guidance notes and booklets. The website is [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk). See Appendix A for a copy Claim Form, Response Pack and corresponding notes.

When considering the value of the claim do not add interest only consider the principal amount.

### 2.1.4 Viability

Legal proceedings can be costly and time consuming. So there is no point in issuing proceedings if for example the debtor has no assets or money. It's always advisable to carry out a Risk Assessment before you decide to issue proceedings. You can obtain risk reports from Experien or D & B where details of the debtor's assets and liabilities will be disclosed. D & B for example will provide their own risk assessment on a scale of 1 – 4, the higher the number the higher the risk.

### **2.1.5 Jurisdiction**

Jurisdiction governs which court the Claim should be issued from and where the final hearing will be set. Usually this will be dealt with in the terms and conditions of the contract and where both parties have agreed the appropriate jurisdiction.

Things are different if there is no jurisdiction clause in the contract and no agreement to the same. In this case for European member states the rule is that the place of performance of the contract governs where proceedings are to be issued. For example in the case of Sale of Goods it is where the goods are to be delivered or were delivered. In the case of a contract for services it is the European member state where the services were provided or should have been provided.

For claims concerning debtors outside Europe or beyond the scope of the relevant European Conventions, you would first need to obtain permission from the court to serve out of Jurisdiction.

If you decide to issue within the jurisdiction of the English courts, the Defendant who is based outside the jurisdiction can challenge this. To do so the Defendant must acknowledge service of the claim and apply under Civil Procedure Rule Part 11 for an order declaring that the court does not have jurisdiction. The application must be made within 14 days of filing the acknowledgement of service. If the Defendant does not do so or proceeds to file a defence without making the said application they will be deemed to accept the jurisdiction.

### **2.1.6 Evidence**

The onus of proof is on you to show that the debtor owes the debt. Documents that the court will expect to see are: -

1. Signed Acceptance of your terms and conditions.
2. Order forms.
3. Outstanding invoices and statements of account.

Depending on the nature of the debt admittedly there are other forms of evidence but in the main the above are the most common.

In some circumstances you may demonstrate a legally binding contract in the absence of signed acceptance of your terms and conditions. For example e-mails showing quotes sent that the buyer replied to accepting the same. Alternatively voice recordings where the buyer expressly agrees to accept your terms and conditions.

Without evidence you will struggle to win your case.

### 2.1.7 Likelihood of Dispute

Take care not to issue legal proceedings if the debtor disputes the debt and is likely to raise a defence. A defence will make legal proceedings lengthy, costly, complicated and there is a danger that the debtor may even raise a counterclaim. So you may end up paying the debtor compensation. Admittedly there are some debtors that raise weak defences just to stall proceedings, or because they are too stubborn to realise they have no case or have received bad advice. This makes the decision to issue legal proceedings a tough one.

If a claim is defended then it will be resolved at a hearing and you will be required to complete an Allocation Questionnaire. The Questionnaire covers case management matters such as:-

- (i) the value of the claim.
- (ii) Witnesses.
- (iii) Any expert witnesses.
- (iv) Any dates that you or your witnesses might not be available.

If you do not complete and file the Questionnaire by the filing date and pay the relevant court fee your claim will be struck out and you will lose your opportunity to recover the debt by court order.

Once the court receives the Allocation Questionnaire it will make directions as to how the claim will be administered. For example amongst other things it will fix a final hearing date, set out a date for the filing and exchange of evidence including witness statements.

On average for a Small Claim providing there are no complications it will usually take up to 6 months before a hearing is resolved. For claims above £5,000 it could take 9 months or more.

If a debtor is likely to raise a defence then it is recommended that you obtain legal advice before you decide to issue proceedings.

### 2.1.8 Interest

All businesses, irrespective of size can claim statutory interest and compensation for late payment of commercial debts. The Late Payment of Commercial Debts (Interest) Act 1998 provides that where the agreement is silent and there are no late payment interest conditions the creditor is entitled to claim Late Payment statutory interest. The interest applied is 8% above the Bank of England base rate.

Alternatively if you can show that the Late Payment interest negotiated with the debtor is not substantial, you can take advantage of statutory Late Payment interest.

The compensation that you are entitled to recover for Late Payment is:-

Size of the unpaid debt	To be paid to the creditor.
Up to £999.99	£40
£1,000 to £9,999.99	£70
£10,000 or more	£100

For further details on the Late Payment of Commercial Debts (Interest) Act 1998 go to the following link where you can download a User Guide:-

[http://www.payontime.co.uk/downloads/late\\_payment\\_brochure.pdf](http://www.payontime.co.uk/downloads/late_payment_brochure.pdf)

## **2.2 Claims in Foreign Currency**

If the contract is for a debt in foreign currency for example in Euros, then you are required to stipulate this when making the claim. The details inserted in the claim form must expressly state:

- (i) that the claim is for payment in a specified foreign currency; and
- (ii) why it is for payment in that currency; and
- (iii) the Sterling equivalent of the sum at the date of the claim; and
- (iv) the source of the exchange rate relied on to calculate the Sterling equivalent.

## **2.3 Enforcement**

If you successfully obtain a Judgment for the value of the debt plus costs and interest and the debtor does not settle the Judgment within the time set by the court, you will have to consider enforcement options.

There are a number of enforcement options available see below:-

- (i) Warrant of Control.
- (ii) Charging Order on Land or Securities.
- (iii) Third Party Debt Order.
- (iv) Attachment of Earnings.
- (v) Insolvency.

### **2.3.1 Warrant of Control**

This enables the County Court Bailiff or High Court Enforcement Officer (HCEO) to seize and sell the debtor's goods to pay the judgment debt and legal and enforcement costs. The items seized are sold at public auction. After deducting the expenses of sale, the judgment debt and costs, any surplus proceeds are returned to the debtor.

Judgments below £600 must be enforced in the County Court. Judgments above £600 and below £5,000 can be enforced in the High Court or County Court. However if you have obtained a judgment in the County Court for £5,000 or more must be enforced in the High Court unless the proceedings originated under the Consumer Credit Act 1974.

A Warrant of Control is useful for debts up to £5,000 because it's more likely that the debtor will have goods of that value. But judgments above £5,000 depending on the wealth of the debtor could prove difficult to enforce through a Warrant of Control. There are certain items that can not be seized, for example:-

- (i) goods on hire or hire-purchase;
- (ii) tools, books, vehicles and other items of equipment which are necessary to the debtor for use personally in their job or business.
- (iii) Clothing, bedding, furniture, household, equipment and provisions which are necessary for satisfying the basic domestic needs of the debtor and his/her family.

To avoid seizure of a motor vehicle the debtor will first have to satisfy the HCEO or Bailiff that they cannot rely on any other transportation. Usually this is very difficult to prove and the HCEO or Bailiff will seize the vehicle. It is always useful therefore to provide the Bailiff or HCEO details of the vehicle including registration number.

### **2.3.2 Charging Order on Land or Securities**

A creditor can apply to the court for an order that a charge consistent with the value of the judgment be placed on the debtor's land. A charging order can also be made in respect of land that the debtor owns jointly with another person, in which case you will obtain a charge against the debtor's share.

A Charging Order on Land will not be granted if the court has made an order that the sum owed is payable by instalments and the debtor keeps up with the instalment payments.

A creditor can also obtain a charging order on a judgment debtors interest in shares or other certain securities.

Charging Orders are useful for judgments above £5,000 and where the creditor knows or is suspicious that the debtor's wealth is locked into property and securities. Charging Orders can be productive for 2 reasons:-

1. On the sale of property and at the point of completion the owner must settle all charges.
2. Remortgaging property requires settlement of all prior charges on the property.

If you cannot wait for the above two eventualities you can apply to the court for an Order for Sale.

The problem with a Charging order is identifying whether the judgment debtor owns property and if so that there is enough equity to warrant a charge for the value of the judgment. You would have to conduct searches at the Land Registry to resolve this. If all else fails you can make an application for an Order for Information whereby the judgment debtor or company officer of the debtor is summoned to appear before a court officer for questioning to disclose their or the company's assets and liabilities with the aim of resolving settlement and/or what enforcement options to exercise. If the debtor or company officer of the debtor fails to attend court a warrant will be issued for their arrest for contempt. However while this could prove very useful you would first have to personally serve the judgment debtor or company officer of the debtor the Order for Information within 14 days of obtaining the order, and this could prove very difficult if the debtor or company officer of the debtor is elusive.

### **2.3.3 Third Party Debt Orders**

This enables you to obtain settlement of the judgment by freezing the debtors bank account and obtaining release of the available funds. Alternatively the Creditor can pursue the same course of action against third parties who owe the debtor money. For example judgment debtors who are self employed often have trade debts owed to them. It is possible to resolve at a hearing of an order for information what these debts are and then take these proceedings accordingly.

On the face of it this is a very good means of enforcement. But a third party debt order only works if you already have details of the debtor's bank or building society account or know details of the third party that owes the debtor money including how much. In the case of individual debtors or sole traders you cannot get an order over a husband and wife's joint bank account if for example the husband alone is the judgment debtor.

#### **2.3.4 Attachment of Earnings**

An attachment of earnings order requires the employer of the debtor to make regular deductions from the debtors salary and pay them into court. An application for an attachment of earnings can only be made in the County Court and for a judgment debt of at least £50. Further an attachment of earnings order will not be granted if the debtor is unemployed or self employed.

This type of enforcement is good for small claims and individual debtors in employment with a bad payment history.

#### **2.3.5 Insolvency**

This form of enforcement need not follow a court judgment providing the debt is £750 or more a creditor can threaten insolvency of a debtor without the need to issue a County Court or High Court Claim. The advantage of using this type of enforcement resulting from a court judgment awarded at a final hearing is that the debtor is more likely to be made insolvent because disputes have already been determined by the court.

There are two enforcement forms of application, a Bankruptcy and Winding Up Petition. The former relates to a private individual, sole trader or partnership and the latter relates to a company.

# Chapter 3

## ENFORCING JUDGMENTS IN EUROPE

### 3.1 Enforcing Judgments in Europe

This can be confusing because there are a number of European Regulations and Conventions that govern enforcement in Europe.

The two main regulations governing enforcement are Regulation No. 44/2001 introduced on the 22nd December 2000 and Regulation No. 805/2004 introduced in October 2005 creating a European Enforcement Order.

Which regulation is relevant will be dependent on the date the judgment was issued. Generally Judgments before 2005 cannot be enforced in Europe because of expiry of the 6-year limitation period.

#### 3.1.2 Regulation 44/2001

Council Regulation 44/2001 ('the Regulation') except for Denmark covers all EU member states. Similar provisions for Denmark are set out in the Brussels Convention and for Norway, Poland, Switzerland and Iceland in the Lugano Convention (the Conventions).

Civil Procedure Rules 74.19 to 74.25 adopt the Regulation and its provisions in the UK. Essentially in order to enforce a European judgment in the UK you will first have to make an application in the High Court for its registration. The application can be made without notice. So there is no need to notify the judgment debtor.

The application must be supported by written evidence exhibiting:-

- (i) the EU judgment and the order for its enforcement, or an authenticated copy; and
- (ii) if the judgment is not in English, a translation of it into English –
  - (a) certified by a notary public or other qualified person; or
  - (b) accompanied by written evidence confirming that the translation is accurate.

Furthermore the application for a money judgment must disclose evidence stating:-

- (i) Your name and address for service in the EU.
- (ii) The name of the judgment debtor and his address or place of business, if known.
- (iii) The amount in respect of which the judgment is unsatisfied; and
- (iv) That the European Court has not suspended enforcement of the judgment.

A judgment debtor may apply to cancel or vary registration of a money judgment on the basis that at the date of registration the judgment had been partly or wholly satisfied. The application must be made within 28 days of the date on which the registration order was served on the judgment debtor.

### **3.1.3 Regulation 805/2004 European Enforcement Order**

In practice a European Enforcement Order is easier to enforce because there is no need to apply to the High Court for registration as with Regulation 44/2001 above. Essentially once the judgment creditor has obtained a Certificate of Enforcement from the court where proceedings commenced, they can enforce the judgment anywhere in Europe without the need to register it.

An application for a European Enforcement Order Certificate in England and Wales must be made by filing form N219 (see Appendix A), at the court from where the judgment was obtained. In other European member states they must file the member state equivalent at the court from where the judgment was obtained.

Accordingly providing the judgment creditor has a European Enforcement Order Certificate and a currency conversion certificate they can go through the usual enforcement procedures in the High Court and County Court.

# Appendix A

## Court Forms

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# Claim Form

<b>In the</b>	
---------------	--

	<i>for court use only</i>
<b>Claim No.</b>	
<b>Issue date</b>	

Claimant



Defendant(s)

Brief details of claim

Value

Defendant's name and address

--

	<b>£</b>
<b>Amount claimed</b>	
<b>Court fee</b>	
<b>Solicitor's costs</b>	
<b>Total amount</b>	

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.  
 N1 Claim form (CPR Part 7) (01.02) *Printed on behalf of The Court Service*

Claim No.	
-----------	--

Does, or will, your claim include any issues under the Human Rights Act 1998?  Yes  No

Particulars of Claim (attached)(to follow)

**Statement of Truth**

\*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

\* I am duly authorised by the claimant to sign this statement

Full name \_\_\_\_\_

Name of claimant's solicitor's firm \_\_\_\_\_

signed \_\_\_\_\_ position or office held \_\_\_\_\_

\*(Claimant)(Litigation friend)(Claimant's solicitor) (if signing on behalf of firm or company)

*\*delete as appropriate*

Claimant's or claimant's solicitor's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

## Notes for claimant on completing a claim form

### Before you begin completing the claim form

- You must think about whether alternative dispute resolution (ADR) is a better way to reach an agreement before going to court. The leaflet 'Making a claim? - Some questions to ask yourself' explains more about ADR and how you can attempt to settle your claim.
- Please read all of these guidance notes. The notes follow the order in which information is required on the form.
- If you are filling in the claim form by hand, please use black ink and write in block capitals.
- Copy the completed claim form and the defendant's notes for guidance so that you have one copy for yourself, one copy for the court and one copy for each defendant. Send or take the forms to the court office with the appropriate fee. The court will tell you how much this is.
- Court staff can help you fill in the claim form and give information about procedure once it has been issued. But they cannot give legal advice. If you need legal advice, for example, about the likely success of your claim or the evidence you need to prove it, you should contact a solicitor or a Citizens Advice Bureau.

**Further information may be obtained from the court in a series of free leaflets.**

## Notes on completing the claim form

### Heading

You must fill in the heading of the form to indicate the name of the court where you want the claim to be issued.

### The claimant and defendant

As the person issuing the claim, you are called the 'claimant'; the person you are suing is called the 'defendant'. Claimants who are under 18 years old (unless otherwise permitted by the court) and patients within the meaning of the Mental Health Act 1983, must have a litigation friend to issue and conduct court proceedings on their behalf. Court staff will tell you more about what you need to do if this applies to you.

### Providing information about yourself and the defendant

#### full address including postcode

You should provide the full address including postcode for yourself and the defendant. The postcode for any address in the United Kingdom may be obtained free from the Royal Mail Address Management Guide, or their website at [www.royalmail.com](http://www.royalmail.com).

If an address does not have a postcode you will need to ask the judge for permission to serve the claim with this information missing. There is no additional fee for this, but if you omit a postcode and fail to ask permission of the judge the court will not allow your claim to be served on the defendant until you supply the missing postcode or a judge permits service without it.

You must provide the following information about yourself and the defendant according to the capacity in which you are suing and in which the defendant is being sued.

When suing or being sued as:-

#### an individual:

You must enter his or her full unabbreviated name where known, including their first name and any middle name, their last name and the title by which she or he is known (i.e. Mr., Mrs., Ms., Dr., etc.) and residential address (including postcode and telephone number). Where the defendant is a proprietor of a business, a partner in a firm or an individual sued in the name of a club or other unincorporated association, the address for service should be the usual or last known place of residence or principal place of business of the company, firm or club or other unincorporated association.

Where the individual is:

#### trading under another name

you must enter his or her full unabbreviated name where known, and the title by which he or she is known and the full name under which he or she is trading, e.g. 'Mr. John Smith trading as Smith's Groceries'.

#### suing or being sued in a representative capacity

you must say what that capacity is e.g. 'Mr Joe Bloggs as the representative of Mrs Sharon Bloggs (deceased)'.

#### suing or being sued in the name of a club or other unincorporated association

add the words 'suing/sued on behalf of' followed by the name of the club or other unincorporated association.

#### an unincorporated business - a firm

In the case of a partnership (other than a limited liability partnership) you must enter the full name of the business followed by the suffix 'a firm'.

Enter the name of the firm followed by the words 'a firm' e.g. 'Bandbox - a firm' and an address including postcode for service. This may either be one of the partners residential addresses or the principal or last known place of business of the firm.

**a company registered in England and Wales or a Limited Liability Partnership**

In the case of a registered company or limited liability partnership, you must enter the full name of the company or partnership followed by the appropriate suffix, i.e. Ltd, Plc, LLP. You must provide an address, including postcode which is either the company's registered office or any place of business in England and Wales that has a real, or the most, connection with the claim e.g. a shop where goods were bought.

**a corporation (other than a company)**

enter the full name of the corporation and any suffix if appropriate and the address including postcode in England and Wales which is either its principal office or any other place where the corporation carries on activities and which has a real connection with the claim.

**an overseas company (defined by s744 of the Companies Act 1985)**

You must enter the company's full name and any suffix if appropriate and address including postcode. The address must either be the registered address under s691 of the Act or the address of the place of business having a real, or the most, connection with the claim.

**under 18** write '(a child by Mr Joe Bloggs his litigation friend)' after the name. If the child is conducting proceedings on their own behalf write '(a child)' after the child's name.

**a patient within the meaning of the Mental Health Act 1983** write '(by Mr Joe Bloggs his litigation friend)' after the patient's name.

**Brief details of claim**

You must set out under **this** heading:

- a concise statement of the nature of your claim
- the remedy you are seeking e.g. payment of money;

**Value**

If you are claiming a **fixed amount of money** (a 'specified amount') write the amount in the box at the bottom right-hand corner of the claim form against 'amount claimed'.

If you are **not** claiming a fixed amount of money (an 'unspecified amount') under 'Value' write "I expect to recover" followed by whichever of the following applies to your claim:

- 'not more than £5,000' or
- 'more than £5,000 but not more than £15,000' or
- 'more than £15,000'

If you are **not able** to put a value on your claim, write 'I cannot say how much I expect to recover'.

**Personal injuries**

If your claim is for 'not more than £5,000' and includes a claim for personal injuries, you must also

write 'My claim includes a claim for personal injuries and the amount I expect to recover as damages for pain, suffering and loss of amenity is' followed by either:

- 'not more than £1,000' or
- 'more than £1,000'

**Housing disrepair**

If your claim is for 'not more than £5,000' and includes a claim for housing disrepair relating to residential premises, you must also write 'My claim includes a claim against my landlord for housing disrepair relating to residential premises. The cost of the repairs or other work is estimated to be' followed by either:

- 'not more than £1,000' or
- 'more than £1,000'

If within this claim, you are making a claim for other damages, you must also write:

'I expect to recover as damages' followed by either:

- 'not more than £1,000' or
- 'more than £1,000'

**Defendant's name and address**

Enter in this box the title, full names, address and postcode of the defendant receiving the claim form (ie. one claim form for each defendant). If the defendant is to be served outside England and Wales, you may need to obtain the court's permission.

**Particulars of claim**

You must set out under this heading:

- a concise statement of the facts on which you rely
- a statement (if applicable) to the effect that you are seeking aggravated damages or exemplary damages
- details of any interest which you are claiming
- any other matters required for your type of claim as set out in the relevant practice direction

**Statement of truth**

This must be signed by you, or by your solicitor or your litigation friend, if appropriate.

Where the claimant is a registered company or a corporation the claim must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company or (in the case of a corporation) the mayor, chairman, president or town clerk.

**Address for documents**

Insert in this box the address at which you wish to receive documents and/or payments, if different from the address you have already given under the heading 'Claimant'. The address must be in England or Wales. If you are willing to accept service by DX, fax or e-mail, add details.

## Notes for defendant on replying to the claim form

Please read these notes carefully - they will help you decide what to do about this claim.  
Further information may be obtained from the court in a series of free leaflets

- If this claim form was received with the particulars of claim completed or attached, you must reply within 14 days of the date it was served on you. If the words 'particulars of claim to follow' are written in the particulars of claim box, you should not reply until after you are served with the particulars of claim (which should be no more than 14 days after you received the claim form). If the claim was sent by post, the date of service is taken as the second day after posting (see post mark). If the claim form was delivered or left at your address, the date of service will be the day after it was delivered.
- You may either:
  - pay the total amount i.e. the amount claimed, the court fee, and solicitor's costs (if any)
  - admit that you owe all or part of the claim and ask for time to pay or
  - dispute the claim
- If you do not reply, judgment may be entered against you.
- The notes below tell you what to do.
- The response pack will tell you which forms to use for your reply. (The pack will accompany the particulars of claim if they are served after the claim form).
- Court staff can help you complete the forms of reply and tell you about court procedures. But they cannot give legal advice. If you need legal advice, for example about the likely success of disputing the claim, you should contact a solicitor or a Citizens Advice Bureau immediately.

**Registration of Judgments:** If this claim results in a judgment against you, details will be entered in a public register, the Register of Judgments, Orders and Fines. They will then be passed to credit reference agencies which will then supply them to credit grantors and others seeking information on your financial standing. **This will make it difficult for you to get credit.** A list of credit reference agencies is available from Registry Trust Ltd, 173/175 Cleveland Street, London W1T 6QR.

**Costs and interest:** Additional costs and interest may be added to the amount claimed on the front of the claim form if judgment is entered against you. In a county court, if judgment is for £5,000 or more, or is in respect of a debt which attracts contractual or statutory interest for late payment, the claimant may be entitled to further interest.

## Your response and what happens next

### How to pay

Do not bring any payments to the court - they will not be accepted.

When making payments to the claimant, quote the claimant's reference (if any) and the claim number.

Make sure that you keep records and can account for any payments made. Proof may be required if there is any disagreement. It is not safe to send cash unless you use registered post.

### Admitting the Claim

#### Claim for specified amount

**If you admit all the claim,** take or send the money, including the court fee, any interest and costs, to the claimant at the address given for payment on the claim form, within 14 days.

**If you admit all the claim and you are asking for time to pay,** complete Form N9A and send it to the claimant at the address given for payment on the claim form, within 14 days. The claimant will decide whether to accept your proposal for payment. If it is accepted, the claimant may request the court to enter judgment against you and you will be sent an order to pay. If your offer is not accepted, the court will decide how you should pay.

**If you admit only part of the claim,** complete Form N9A and Form N9B (see 'Disputing the Claim' overleaf) and send them to the court within 14 days. The claimant will decide whether to accept your part admission. If it is accepted, the claimant may request the court to enter judgment against you and the court will send you an order to pay. If your part admission is not accepted, the case will proceed as a defended claim.

#### Claim for unspecified amount

**If you admit liability for the whole claim but do not make an offer to satisfy the claim,** complete Form N9C and send it to the court within 14 days. A copy will be sent to the claimant who may request the court to enter judgment against you for an amount to be decided by the court, and costs. The court will enter judgment and refer the court file to a judge for directions for management of the case. You and the claimant will be sent a copy of the court's order.

**If you admit liability for the claim and offer an amount of money to satisfy the claim,** complete Form N9C and send it to the court within 14 days.

The claimant will be sent a copy and asked if the offer is acceptable. The claimant must reply to the court within 14 days and send you a copy. If a reply is not received, the claim will be stayed. If the amount you have offered is **accepted** -

- the claimant may request the court to enter judgment against you for that amount.
- if you have requested time to pay which is not accepted by the claimant, the rate of payment will be decided by the court.

If your offer in satisfaction is **not accepted** -

- the claimant may request the court to enter judgment against you for an amount to be decided by the court, and costs; and
- the court will enter judgment and refer the court file to a judge for directions for management of the case. You and the claimant will be sent a copy of the court's order.

### Disputing the claim

**If you are being sued as an individual for a specified amount of money and you dispute the claim**, the claim may be transferred to a local court i.e. the one nearest to or where you live or carry on business if different from the court where the claim was issued.

**If you need longer than 14 days to prepare your defence or to contest the court's jurisdiction to try the claim**, complete the Acknowledgment of Service form and send it to the court within 14 days. This will allow you 28 days from the date of service of the particulars of claim to file your defence or make an application to contest the court's jurisdiction. The court will tell the claimant that your Acknowledgment of Service has been received.

**If the case proceeds as a defended claim**, you and the claimant will be sent an Allocation Questionnaire. You will be told the date by which it must be returned to the court. The information you give on the form will help a judge decide whether your case should be dealt with in the small claims track, fast track or multi-track. After a judge has considered the completed questionnaires, you will be sent a notice of allocation setting out the judge's decision. The notice will tell you the track to which the claim has been allocated and what you have to do to prepare for the hearing or trial. **Leaflets telling you more about the tracks are available from the court office.**

#### Claim for specified amount

**If you wish to dispute the full amount claimed or wish to claim against the claimant (a counterclaim)**, complete Form N9B and send it to the court within 14 days.

**If you admit part of the claim**, complete the Defence Form N9B and the Admission Form N9A

and send them both to the court within 14 days. The claimant will decide whether to accept your part admission in satisfaction of the claim (see under 'Admitting the Claim - specified amount'). If the claimant does not accept the amount you have admitted, the case will proceed as a defended claim.

**If you dispute the claim because you have already paid it**, complete Form N9B and send it to the court within 14 days. The claimant will have to decide whether to proceed with the claim or withdraw it and notify the court and you within 28 days. If the claimant wishes to proceed, the case will proceed as a defended claim.

#### Claim for unspecified amount/return of goods/ non-money claims

**If you dispute the claim or wish to claim against the claimant (counterclaim)**, complete Form N9D and send it to the court within 14 days.

#### Personal injuries claims:

**If the claim is for personal injuries and the claimant has attached a medical report to the particulars of claim**, in your defence you should state whether you:

- agree with the report **or**
- dispute all or part of the report **and** give your reasons for doing so **or**
- neither agree nor dispute the report **or** have no knowledge of the report

Where you have obtained your own medical report, you should attach it to your defence.

**If the claim is for personal injuries and the claimant has attached a schedule of past and future expenses and losses**, in your defence you must state which of the items you:

- agree **or**
- dispute **and** supply alternative figures where appropriate **or**
- neither agree nor dispute or have no knowledge of

#### Address where notices can be sent

This must be either your solicitor's address, your own residential or business address in England and Wales or (if you live elsewhere) some other address within England and Wales.

#### Statement of truth

This must be signed by you, by your solicitor or your litigation friend, as appropriate.

Where the defendant is a **registered company or a corporation** the response must be signed by either the director, treasurer, secretary, chief executive, manager or other officer of the company **or** (in the case of a corporation) the mayor, chairman, president or town clerk

## Response Pack

You should read the 'notes for defendant' attached to the claim form which will tell you when and where to send the forms

### Included in this pack are:

- either **Admission Form N9A** (if the claim is for a specified amount) or **Admission Form N9C** (if the claim is for an unspecified amount or is not a claim for money)
- either **Defence and Counterclaim Form N9B** (if the claim is for a specified amount) or **Defence and Counterclaim Form N9D** (if the claim is for an unspecified amount or is not a claim for money)
- **Acknowledgment of service** (see below)

	<b>Complete</b>
If you admit the claim or the amount claimed and/or you want time to pay	the admission form
If you admit part of the claim	the admission form and the defence form
If you dispute the whole claim or wish to make a claim (a counterclaim) against the claimant	the defence form
If you need 28 days (rather than 14) from the date of service to prepare your defence, or wish to contest the court's jurisdiction	the acknowledgment of service
If you do nothing, judgment may be entered against you	

## Acknowledgment of Service

Defendant's full name if different from the name given on the claim form

In the	
<b>Claim No.</b>	
<b>Claimant</b> (including ref.)	
<b>Defendant</b>	

Address to which documents about this claim should be sent (including reference if appropriate)

	if applicable	
	fax no.	
	DX no.	
	Ref. no.	
Tel. no.	Postcode	e-mail

### Tick the appropriate box

1. I intend to defend all of this claim
2. I intend to defend part of this claim
3. I intend to contest jurisdiction

(My) (Defendant's) 

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

  
date of birth is

If you file an acknowledgment of service but do not file a defence within 28 days of the date of service of the claim form, or particulars of claim if served separately, judgment may be entered against you.

If you do not file an application to dispute the jurisdiction of the court within 14 days of the date of filing this acknowledgment of service, it will be assumed that you accept the court's jurisdiction and judgment may be entered against you.

Signed

Position or office held

(Defendant)(Defendant's solicitor)(Litigation friend)

(if signing on behalf of firm or company)

Date

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

**Defence and Counterclaim**  
(unspecified amount, non-money and return of goods claims)

- Fill in this form if you wish to dispute all or part of the claim and/or make a claim against the claimant (a counterclaim)
- You have a limited number of days to complete and return this form to the court.
- Before completing this form, please read the notes for guidance attached to the claim form.
- Please ensure that all the boxes at the top right of this form are completed. You can obtain the correct names and number from the claim form. The court cannot trace your case without this information.

**How to fill in this form**

- Set out your defence in section 1. If necessary continue on a separate piece of paper making sure that the claim number is clearly shown on it. In your defence you must state which allegations in the particulars of claim you deny and your reasons for doing so. **If you fail to deny an allegation it may be taken that you admit it.**
- If you dispute only some of the allegations you must
  - specify which you admit and which you deny; and
  - give your own version of events if different from the claimant's.

In the

Claim No.

Claimant  
(including ref.)

Defendant

- If the claim is for money and you dispute the claimant's statement of value, you must say why and if possible give your own statement of value.
- If you wish to make a claim against the claimant (a counterclaim) complete section 2.
- Complete and sign section 3 before returning this form.

**Where to send this form**

- send or take this form immediately to the court at the address given on the claim form.
- Keep a copy of the claim form and the defence form.

**Community Legal Service Fund (CLSF)**

You may qualify for assistance from the CLSF (this used to be called 'legal aid') to meet some or all of your legal costs. Ask about the CLSF at any county court office or any information or help point which displays this logo.



**1. Defence**

Defence (continued)

Claim No.

**2. If you wish to make a claim against the claimant (a counterclaim)**

If your claim is for a specific sum of money, how much are you claiming? £

I enclose the counterclaim fee of £

My claim is for *(please specify)*

- To start your counterclaim, you will have to pay a fee. Court staff can tell you how much you have to pay.
- You may not be able to make a counterclaim where the claimant is the Crown (e.g. a Government Department). Ask at your local county court office for further information.

What are your reasons for making the counterclaim?

If you need to continue on a separate sheet put the claim number in the top right hand corner

**3. Signed**

(To be signed by you or by your solicitor or litigation friend)

\*(I believe)(The defendant believes) that the facts stated in this form are true. \*I am duly authorised by the defendant to sign this statement

*\*delete as appropriate*

D	D	M	M	Y	Y	Y	Y
---	---	---	---	---	---	---	---

**Defendant's date of birth, if an individual**

Give an address to which notices about this case can be sent to you

Postcode

Tel. no.

**Position or office held**

(if signing on behalf of firm or company)

**Date**

if applicable

fax no.

DX no.

e-mail

<input type="text"/>
<input type="text"/>
<input type="text"/>

## Application for European Enforcement Order Certificate (Judgment by agreement/ admission/settlement)

Name of court	Claim No.
---------------	-----------

To be completed where the debtor has agreed by admission or a settlement has been approved by or concluded before a court in the course of proceedings - Article 3.1(a) Council Regulation (EC) No. 805/2004.

You cannot get a European Enforcement Order certificate if the judgment conflicts with any of the rules on jurisdiction laid down in Sections 3 and 6 of Chapter II of Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

### About the judgment creditor

Judgment creditor full name

The judgment creditor is

- an individual
- an individual trading under a business name
- a partnership
- a company
- a corporation

in whose favour the judgment has been given.

### About the judgment debtor

Judgment debtor full name

### About you

Your full name

Address (include post code)

Telephone number

Fax number

E-mail address

### About the application

- I make this witness statement in support of my application/the application of the judgment creditor for the judgment ("the Judgment") to be certified as an EEO.
- I am duly authorised to make the application.

### About the judgment

- The judgment has not been stayed, varied or set aside.
- The judgment includes an enforceable decision on the amount of costs related to the court proceedings and the judgment debtor has not specifically objected to his obligation to bear such costs in the course of the proceedings

The judgment is a judgment in an uncontested claim in that (select one of the following)

- the debtor has expressly agreed to it by admission.
- the debtor has expressly agreed to it by means of a settlement which has been approved by a court in the course of proceedings.

Name of court in which judgment was given

The order is for payment of a specific sum and the principal amount is

### Checklist

Which of the following documents have you attached to this application:

- the completed EEO Certificate
- the judgment
- costs certificate

### Statement of truth

- \* I believe that the facts stated in this form and the attached European Enforcement Order Certificate are true.
- \* I am duly authorised by the judgment creditor to sign this statement.

Print full name \_\_\_\_\_

Name of judgment creditor's solicitor's firm \_\_\_\_\_

signed \_\_\_\_\_ position or office held \_\_\_\_\_  
\*(Judgment creditor)(Litigation friend) (if signing on behalf of firm or company)  
(Judgment creditor's solicitor)

*\*delete as appropriate*



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