

# Debt Recovery Guide

by

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## Letter Before Action / Issuing Your Claim

Once the decision has been made to pursue payment by instructing T G Baynes the need for supplying accurate information as to the correct identity of your debtor(s) and the amount(s) due cannot be over emphasised. Many a case has either faltered or failed as a result of inaccurate instructions. However if there is some doubt in your mind as to the details you have, do not hesitate to make that clear to us from the outset as we have in-house means for checking most businesses and close links with enquiry agents for further useful information.

T G Baynes will, once instructed, usually send a Letter Before Action commonly known as the **LBA**. The standard notice given is 7 days although this can be reduced if required. There are several advantages of the letter. It is quick, usually sent the same day as instruction, relatively cheap if payment is made as a result of its receipt and it sets out very clearly the claim being made which is a requirement of the Civil Procedure Rules. In addition in a commercial claim, that is **B**usiness to **B**usiness, our computer system is programmed to calculate interest and Late Payment Charges under the Late Payment of Commercial Debts (Interest) Act 1998 that, where paid, give our clients a "bonus" for their trouble. In claims against consumers, interest under the County Court Act is calculated and requested along with payment of the debt. Since this guide was prepared the new pre-action protocol for debts due from consumers or sole traders has come into force and it is best, should you have debts of this type, that we advise you separately because it has become much more complex and time-consuming due to these new regulations.

The next stage if the debtor ignores the **LBA** is to issue a Claim Form (used to be known as a summons or writ). This is a step never taken without our client's clear instruction to do so. Our specialist department uses current technology to progress claims quickly and efficiently while keeping you abreast of the position. When the claim is served, it is not unusual at this stage for the debtor, knowing now you mean what you say, to cave in and pay all that is due, to include interest, costs and Late Payment charges, all of which are claimed on your behalf.

Service of the **Claim Form** by the Court normally takes less than a week after which the debtor has 14 days to pay or dispute your claim. If there is no response after 14 days we will always seek your instruction to apply for Judgment against your debtor. A **Judgment** is the document upon which enforcement action can be taken in further attempts to recover all that is due to you.

## Enforcement

The first line of **Enforcement** is usually to issue an **execution warrant** (known as a Writ of Control in the High Court). Our debt collection department will, upon your instructions complete the appropriate paperwork and pay the fee instructing a County Court Enforcement Agent or High Court Enforcement Officer. These will attend on the debtor's premises in an attempt to take away sufficient goods to satisfy your debt and all recoverable costs and if necessary sell them at auction (although sale happens in a minority of cases). An execution warrant can fail for a number of reasons: - the debtors have left the premises without trace, the goods are not worth selling and the following bluff and bravado have not worked, they are claimed by the spouse or another company. Where there is a claim by a third party it can be tested in an action within the same proceedings known as Interpleader Proceedings often before a Master in the High Court. Recent changes in the law now require the third party to issue these proceedings to prove their claim. It is not a course of action for the faint hearted or those with limited cash for the action, as should the third party prove their claim. Costs and damages may be awarded against the Claimant. It should be noted at this stage that T G Baynes policy on behalf of their clients is to transfer County Court Judgments amounting to more than £600 to the High Court as the service and outcome is often better than a County Court warrant.

Next we will consider a **Third Party Debt Order (Garnishee)**. As the name suggests payment of your debt is sought from a third party who owes your debtor money or who is holding money on their behalf e.g. a Bank. By way of application to the Court for such an order based on the Judgment the third party is forced, if in funds, to pay up. The scenario that sometimes presents itself to our clients is that the debtor will say, when being pursued for payment, that so and so owe us hence we cannot pay you yet! Providing the information your own credit team glean at the time is sufficient an application can be made to the Court.

**Attachment of Earnings** is another order again based on the Judgment that can be asked of the Court. It only applies to individual debtors, not companies. There are a number of matters to take into account when considering this method of enforcement. It can be frustrating when your debtor fails to attend Court when ordered ending with a possible committal order that has to be personally served. Hence the process can be cumbersome and expensive with small returns after the Court considers all of the debtor's financial circumstances. It is also worth noting that the order against the employer to deduct earnings fails if the debtor leaves that employment or the debtor does not earn enough (there is a minimum amount to be earned before an A of E order will bite).

Also available and often very effective is a **Charging Order**. This is a means whereby under the Judgment a charge over the debtor's property is sought. There is a fair bit of work involved for T G Baynes and I's have to be dotted and T's crossed to achieve both the initial and final order with the Court. Further work has to be done to ensure that registration is lodged with the Land Registry to secure your position. As with all things the situation is not perfect in that often the order is obtained against one of the two parties that own the property, so any subsequent application for an order for sale of the property will not be looked on favorably by the Court, especially where children are some of the occupants. However the commencement of such proceedings can result in money being raised before the Court Hearing to stave off even the possibility of a forced sale. With the property market currently on the move upwards in value there is a reasonable prospect in due course of your being paid from a voluntary sale or re-mortgage to include interest at 8% per annum from the date of your order. It is worth noting also that a Charging Order can be obtained against commercial property and T G Baynes have often achieved payment for clients from the process.

## Winding up Petition

This is an action taken against a Limited Company or Limited Liability Partnership. The safest way of proceeding is based upon a Judgment after serving a statutory demand. The usual way of proceeding where no Judgment is obtained is to serve a statutory demand upon the registered office of the debtor company and after 21 days, and in the absence of any response, present a petition based on non-compliance. However some of T G Baynes' clients being aware of the risks involved and the possible costs implications have had us give three days' notice before

issuing a petition. Once issued the Court usually allocates a Hearing date some 6 to 8 weeks ahead. During this time the petition has to be served, advertised and verified with the Court.

The object of the exercise is to put the debtor company in a corner out of which they cannot get without paying. Should a Winding up Order be made, the Official Receiver's office will first review the matter and in some instances pass to an Insolvency Practitioner to wind up the affairs of the company. These proceedings are not for the faint hearted or cash strapped as they can be expensive and sometimes stressful as debtors make desperate attempts to persuade creditors not to proceed. The initial disbursements are also reasonably high and an impecunious debtor may have insufficient funds available even to meet repayment of these. T G Baynes will usually give a fixed price for the work involved providing the petition is not protracted (more than one hearing) or defended but the bulk of the costs are in the disbursements paid to the Court and other bodies involved in the process.

## **Bankruptcy**

This applies to individual debtors and (except that the proceedings are not advertised) the procedure is similar to winding up. Your debt must be over £5000, and it is perhaps the biggest "stick" you can hit a reluctant payer with. If the debtor jointly owns property with another a trustee in bankruptcy has the power to proceed in order to arrange a sale of the property if the other owner does not pay him a sufficient sum to redeem the bankrupt's share of the equity. It is of course useful before one embarks on this procedure to have a reasonable idea of the debtor's circumstances because again it is a costly process. The timing of events is similar to winding up but the costs a little lower. The final outcome as to any realisations from the bankrupt's estate will take anything up to two years or more. The action is started after personal service of a statutory demand that can be based on a Judgment, a failure to pay an execution warrant (enforcement officer) or a statutory demand based simply on the debtor's inability to pay on time.

## **Order for Debtor to attend Court for Questioning (Oral Examination)**

This a process whereby a debtor (director or other officer in the case of a Limited Company) can be brought before the Court and examined as to his assets and invited to make an offer to pay. It can be an embarrassing experience and one that sometimes the debtor will avoid by paying. If the debtor ignores the Court a committal order can be made but the chances of it ending with the debtor in prison are slim as somehow most debtors seem to either disappear without trace before the event or become so ill as not be accountable.

## **Defended Actions**

These are often viewed by our clients as the bane of their existence because in many instances this is the first they were made aware there was any dispute. Be that as it may the Courts, under what are known as the Woolf and more recently the Jackson reforms, have tightened up the whole process most considerably and your solicitor finds him or herself locked into a rigorous process on your behalf. It is very important at this stage to be sure "all your ducks are in a row" and that you can quickly make needed information available. Failure to do so within the Court's specified timetable can result in your case being struck out with costs against you.

Basically there are three tracks into which a disputed claim will fall, the small claim track up to £10,000, the fast track up to £25,000 and above this sum the multi-track. As a "rule of thumb" two thirds of the costs of the litigation in the two higher tracks are recoverable from your debtor. In the small claim track recoverable costs are severely limited in that they are thought to be the fixed costs upon the original issue of proceedings.

New Regulation from the EU suggest that in matters where Late Payment of Commercial Debts (Interest) Act 1998 applies, the Creditor should be able to recover its reasonable costs of litigation. This is new law and we have yet to see how it will be interpreted. Rest assured we are arguing for full recovery, no matter the track. So watch this space!

# Our Charges

## Court Fees

These are found on a scale published by H M Courts & Tribunal Service website [www.justice.gov.uk/about/hmcts](http://www.justice.gov.uk/about/hmcts) and in the case of issuing the Claim are on a sliding scale upwards with the value of the debt. In most cases T G Baynes will pay these on our clients' behalf and bill them after doing so.

## Other disbursements

These are payments made by us and can include service agents fees - advertising of a Winding-Up Petition - High Court Enforcement Officer fees - Land Registry and others.

## Solicitors Costs/Charges

In the undefended debt litigation that the firm undertakes these are on a fixed price scale, a copy of which is available upon request. It should be noted that most of these items are recoverable from your debtors in successful actions and in many cases where interest and Late Payment Charges have been recovered our clients end up with more back than we were instructed to collect.

## Defended Costs

It should be noted that all defended actions are always conducted by the fully qualified members of our team and that work done is charged on an hourly basis. Understandably some balk at these costs sometimes because of their value in relation to the claim and in some instances because it is not generally understood that the hourly rates are largely dictated by the Court system and are simply a way of calculating how to run a business providing legal services by skilled and qualified individuals who are assisted by a range of support staff, covered by ever more expensive insurance policies and coping with the rising cost of running any business.

It is however T G Baynes policy always, no matter what the level of case, to vigorously pursue an appropriate costs order against your debtor. Please do always speak to us about these matters as soon as you hear from one of our staff so that we have an agreed basis and understanding upon which to pursue your disputed debt.