

Debt Recovery Guide

Arc Legal Assistance provide advice to thousands of businesses and individuals each year through its legal advice helpline. We often speak to businesses that have trouble recovering unpaid debts.

Our team has put together a short guide with some template letters that you may find useful if faced with a situation where a debtor is refusing to pay.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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Contracts

The vast majority of debts will arise out of a contract, usually for goods or services provided to a third party. Therefore, in order for the debt to be recoverable there must be a binding contract in place.

For any contract to exist there must be:

- An offer
- Acceptance
- Consideration (pay), and
- An intention to create legal relations

While it is possible for these elements to exist without a written contract, it will be much more difficult to enforce and prove what the agreed terms actually were. For that reason, it is always preferable to have a clear written agreement in place and always make sure the agreement is signed by the other party.

When putting together written agreements you should always consider who you are dealing with, is the other party a consumer or a trader? If you are providing goods or services to a consumer, they will have increased rights. It is always preferable to have an agreement drawn up professionally. Consumers have specific rights under:

- The Consumer Rights Act 2015
- The Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013

In certain circumstances the failure to provide certain information can, in itself, make an agreement unenforceable.

Initial contact

If you have a clear agreement in place and a payment is missed or not paid, it is usually worth sending one or two reminder letters explaining:

- How much is owed
- What it is for
- When it became due

You could also provide:

- Your full details and full details of the person who owes the money, names addresses etc.
- Copies of any paperwork related to the debt
- When you expect payment, for example within the next 7 days
- Details of how the debtor can get in touch if they are experiencing financial difficulties
- Details of how the debtor can dispute the debt
- Details of any interest or other charges that could be payable if the debt isn't paid

**See Letters 1 and 2 in 'Debt Recovery Letters' document.*

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If someone is experiencing financial difficulties, you should look to try and help them settle the debt as best you can. This could include giving them more time to pay, or arranging a payment plan with them.

If these reminder letters don't work, then you have to consider your options carefully.

Mediation or alternative dispute resolution

These options are increasingly being seen as a way to avoid court action. The Consumer Rights Act 2015 specifically refers to Alternative Dispute Resolution and many organisations have an obligation to refer consumers to an independent body who can get involved to help resolve a dispute.

You may find the courts are more favourable to those who have attempted to resolve disputes through negotiation or mediation first. You will usually need to demonstrate to the court you have at least tried to deal with a matter informally.

If mediation or negotiation breaks down, you can still consider taking the matter to court.

Debt recovery agents

Certain companies specialise in debt recovery. They may be able to assist you in recovering a debt for a fixed fee or they may take a percentage of the amount they recover.

You should note that debt receiver agents may not be legally qualified.

Court proceedings

You should always seek legal advice before taking a matter to court and we would always recommend that you have professional help in any matter that goes before a court.

Most debt claims under £10,000 will be dealt with in a County Court and allocated to the small claims track, often referred to as the Small Claims Court.

While the small claims track is meant to be less complicated, you are still required to comply with the Civil Procedure Rules.

You should consider the following before taking someone to court:

- There is never a guarantee of winning at court, even the strongest case can lose as ultimately the Judge will make the decision
- Court proceedings can be costly, even without a solicitor there are various fees that have to be paid throughout the process
- Court proceedings can be time consuming, you will probably need to attend court if the matter goes to a hearing. This should be factored into the overall cost of the claim
- If you lose you may have to pay the other sides costs

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- Having a judgement against someone doesn't give you a guarantee they will pay what they owe. You may have to go back to court to enforce the judgement and this can be time consuming and expensive. Even then, if they have no assets or funds you may not get payment.

Court proceedings should be seen as a last resort. If you decide you are going to consider taking someone to court you should send them a 'letter before claim' in the first instance.

As of the 1st October 2017 any letter before claim related to a debt owed by an individual to a business (including a sole trader) must be sent in accordance with the Pre-Action Protocol for Debt Claims contained in the Civil Procedure Rules.

The letter before claim should include an Information Sheet, a Reply Form and a Financial Statement.

**See Letter 3: Letter before claim in 'Debt Recovery Letters' document.*

**See Information Sheet in 'Debt Recovery Letters' document.*

**See Reply Form in 'Debt Recovery Letters' document.*

**See Financial Statement in 'Debt Recovery Letters' document.*

Without prejudice settlement

Without prejudice is a legal term that is usually used when one party wants to make an offer to resolve a dispute but they don't want that offer to prejudice their position if the matter has to go to court at a later date. If used properly any negotiations done, or offers made, on a without prejudice basis will not be seen by the courts if those negotiations break down.

The courts may however take those negotiations into account when considering making a costs order against someone who has unreasonably refused to settle a matter. This is why you may see the phrase 'without prejudice save as to costs'.

Settlement can be a great option to consider. You may be offering to settle the matter for a reduced fee, but it can mean getting at least some of the debt quickly and without the hassle or cost of going through a Court procedure.

**See Letter 4: Without prejudice settlement in 'Debt Recovery Letters' document.*

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- **Filling in the Reply Form**

If you have not been able to resolve the matter by speaking to the business, you should fill in the Reply Form that was provided with the letter from the business, and then send it back to the business. You should complete the Reply Form with as much information as possible to avoid court action being taken against you.

How long do I have to fill in the Reply Form?

You only have 30 days from the date at the top of the letter from the business to send back the Reply Form. If the business does not get your Reply Form within 30 days, it could take you to court in relation to the debt. Make sure you allow time for posting.

If a court orders you to pay an amount of money (called “having judgment entered against you”), details of the judgment will usually be entered on the Register of Judgments, Orders and Fines. Most entries stay on the Register for 6 years unless you pay the amount you owe within one month of the judgment.

Organisations such as banks, building societies and credit companies use the information on the Register when someone applies for credit, such as a loan or overdraft. It helps them decide whether or not that person would be able to pay off a debt.

What happens if I fill in and return the Reply Form in time?

If you return the Reply Form within 30 days, you and the business will have at least a further 30 days to discuss the debt, or for you to seek debt advice, before the business takes you to court. During that time, you should discuss with the business how you can resolve the matter, ideally without going to court.

If you request more information in the Reply Form, the business must wait at least 30 days after it gives you that information before taking you to court.

Where can I find out more?

This Information Sheet, in ‘Debt Recovery Letters’ document, is a summary of your rights and responsibilities under the Pre-Action Protocol for Debt Claims. Where a business and an individual disagree about a debt claim, the Protocol tells them what they should do before they go to court. If you want to know more, the full Protocol is available at: <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>.