

Debt Recovery Guide

Arc Legal Group provide advice to thousands of businesses and individuals each year through its Legal Assistance 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>

Debt recovery letters

Letter 1: Reminder

Dear [CUSTOMER]

Outstanding fee

I write in relation to your outstanding fee of [AMOUNT] that has been due since [DATE].

We would be grateful if you could give this matter your full attention and payment should be made within the next 7 days [IF APPROPRIATE INSERT PAYMENT METHODS (BANK ACCOUNT, CHEQUE ETC.)].

If you have already made payment, kindly ignore this letter.

Yours sincerely

Letter 2: Reminder

Dear [CUSTOMER]

Outstanding fee

I write further to my letter dated [DATE]. Despite my letter a fee of [AMOUNT] remains outstanding and has been due since [DATE].

I would like to remind you that you entered into a binding agreement on [DATE] for the provision of [DETAILS OF REASON FEE IS DUE]. I enclose a copy of the agreement that clearly sets out your obligations.

[IF NOTICE OR INTEREST PAYMENTS ARE DUE, HIGHLIGHT CLAUSES IN THE CONTRACT]

If you are experiencing any financial difficulties or consider we have made a mistake about the amount you owe it is important you contact us immediately. If you contact us we can discuss any concerns you have and may, in certain circumstances be able to arrange a re-payment plan.

We would be grateful if you could give this matter your full attention and payment should be made within the next 7 days [IF APPROPRIATE INSERT PAYMENT METHODS (BANK ACCOUNT, CHEQUE ETC.)].

If you have already made payment, kindly ignore this letter.

Yours sincerely

Letter 3: Letter before claim

Dear [CUSTOMER]

Letter before claim

I write further to my previous letters dated [DATES]. Despite these letters a fee of [AMOUNT] remains outstanding and has been due since [DATE].

This letter is being sent to you in accordance with the Pre-Action Protocol for Debt Claims contained in the Civil Procedure Rules.

I would like to remind you that you entered into a binding agreement on [DATE] for the provision of [DETAILS OF REASON FEE IS DUE]. I enclose a copy of the Agreement that clearly sets out your obligations. This Agreement also sets out how the above fee has been calculated.

[IF NOTICE OR INTEREST PAYMENTS ARE DUE, HIGHLIGHT CLAUSES IN THE CONTRACT AND EXPLAIN HOW THEY HAVE BEEN CALCULATED. YOU SHOULD ALSO EXPLAIN IF THESE AMOUNTS ARE CONTINUING TO ACCRUE].

The debt can be paid by [SET OUT METHOD OF PAYMENT AND ADDRESS TO WHICH IT CAN BE SENT].

If you are experiencing any financial difficulties or consider we have made a mistake about the amount you owe it is important you contact us immediately. If you contact us we can discuss any concerns you have and may, in certain circumstances be able to arrange a re-payment plan. You should also note that free independent advice and assistance can be obtained from the organisations listed in the Information Sheet enclosed with this letter.

Please find enclosed:

- Agreement [DATED]
- Information Sheet
- Reply Form
- Financial Statement
- [ANY ADDITIONAL DOCUMENTATION RELEVANT TO THE DEBT]

You should respond to this letter and return, to the above address, the completed Reply Form and Financial Statement within 30 days of the date of this letter [DATE].

I must make you aware that if I do not hear from you within the next 30 days I am considering instigating County Court proceedings against you. If this is necessary, you will be responsible for additional legal costs and interest at a rate of 8% p.a. This course of action is likely to have an adverse impact on your credit rating.

I look forward to hearing from you and I trust Court proceedings will not be necessary.

Yours sincerely

Information sheet

You have received this notice because a business intends to take you to court in relation to a debt. This notice tells you what to do next, including how to avoid court action. Please read it carefully.

What should I do now to make sure I am not taken to court unnecessarily?

Read the enclosed letter from the business very carefully. Think about whether you owe the debt and whether the amount is correct. The letter should provide information about how much money you owe and any interest and fees added to the debt. If it doesn't, ask the business for more information.

Once you have read the letter, consider the following options.

- **Seeking debt advice**

If you are in financial difficulty or need advice to help you work out whether you owe the debt, or how you might pay the debt, contact a debt advisor (particularly if you haven't been in contact with the business for a number of years).

The following organisations offer free, impartial and non-judgemental advice:

Citizens Advice	03444 111 444 (England) 03444 772 020 (Wales)	www.citizensadvice.org.uk
Civil Legal Advice	0345 345 4345	www.gov.uk/civil-legal-advice
StepChange Debt Charity	0800 138 1111 (Freephone)	www.stepchange.org
National Debtline	0808 808 4000 (Freephone)	www.nationaldebtline.org
AdviceUK	0300 777 0107	www.adviceuk.org.uk
Christians Against Poverty	0800 328 0006 (Freephone)	www.capuk.org

It is recommended that you get debt advice if you have any doubt about whether you owe the debt or whether you can pay it now.

If you don't have a copy of the agreement (contract) between you and the business, and you need this to decide what to do next or to help you get debt advice, you can ask the business to provide you with a copy.

- **Speaking to the business**

If you agree you owe the debt and want to talk to the business about payment terms, or if you have any questions or concerns, get in touch with the business as soon as possible. Their contact details should be in the letter they sent you.

- **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.

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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 on page 6 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>.

Reply Form

YOU HAVE 30 DAYS FROM THE DATE AT THE TOP OF THE ENCLOSED LETTER TO FILL IN AND RETURN THIS FORM.

IF YOU DON'T, IT COULD RESULT IN COURT PROCEEDINGS.

If you have any questions or would like to discuss the debt, please call the business that sent you this form as soon as possible.

Full name:

Address and postcode:

Contact telephone numbers:

Email address:

Reference:

SECTION 1: Do you owe the debt?

Fill in one of the boxes in this section. Use more pages if you need to.

It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.

Box G asks about debt advice.

SECTION 1: Do you owe the debt?

Fill in one of the boxes in this section. Use more pages if you need to.

It is recommended that you get debt advice if you have any doubt about whether you owe the debt and whether you can pay it now, or if you want advice on any rights and protections you may have.

Box G asks about debt advice.

Box A

I agree I owe the debt.

Tick this box if you agree you owe the debt and agree the amount of the debt is correct.

IF YOU WILL PAY THE DEBT, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

Box B

I owe some of the debt, but not all of it.

Tick this box if you agree you owe some of the debt, but not all of it, for example if you think too much interest has been added or you haven't been credited for payments you have made in the past.

The amount of the debt I owe to you is:

£

Say how much you think you owe.

£

I don't owe any more than this because:

Explain on a separate piece of paper why you don't owe all of the debt. Give as much detail as possible and provide copies of any supporting documents.

IF YOU WILL PAY THE PART OF THE DEBT YOU OWE, GO TO SECTION 2.

IF YOU NEED DEBT OR LEGAL ADVICE, GO TO SECTION 3.

OTHERWISE, GO TO SECTION 4.

Box C

I don't know whether I owe the debt.

Tick this box if you're not sure whether you owe the debt and/or you need help from a debt advisor to work out whether you should pay.

NOW GO TO SECTION 3.

Box D

I dispute the debt.

Tick this box if you don't owe the debt, for example because the debt should be paid by someone else, because you have already paid it, or because there is a legal problem with the credit agreement.

I dispute the debt because:

Explain on a separate piece of paper why you dispute the debt. Give as much detail as possible and provide copies of any supporting documents.

NOW GO TO SECTION 4.

SECTION 2: How will you pay?

Only complete this section if you ticked Box A or Box B in Section 1 and you want to pay now.

The letter from the business will tell you how to pay. Keep a record of the payments you make.

Box E

I will pay what I owe now.

Tick this box if you agree that you owe all of part of the debt and you are able to pay what you owe now. You should pay using the payment details in the letter from the business. Keep a copy of any proof of payment you receive.

Box F

I will pay, but I need time to pay.

Tick this box if you agree that you owe all or part of the debt, but you can't pay right now.

If you offer to make repayments, you must be able to afford them. You should consider getting debt advice about how much you can afford to repay. If you are seeking debt advice, complete Section 3.

My proposals for repayment are:

Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.

Explain on a separate piece of paper how you intend to pay the debt. Say how much you could pay now and how you will pay the remainder. For example, say how much you could pay each week, fortnight or month and when your first payment would be made.

I have provided a Financial Statement showing my current financial situation:

Yes No

To help the business ensure you can afford your proposed repayments, fill out the Financial Statement that is attached to this form. You should also attach a copy of any budget or financial statement that a debt advice organisation has helped you prepare.

SECTION 3: Do you intend to get, or are you already getting, debt advice?

Only complete this section if you are getting debt advice about whether you owe the debt or whether you can afford to pay.

Box G

I am getting or intend to get debt advice.

I am getting advice from:

Insert the name and contact details of the person or organisation giving you advice.

I am getting advice about:

Explain on a separate piece of paper what you are getting advice about, for example whether you owe the debt or how you could pay.

I have an appointment with an adviser on:

If you have an appointment with a debt adviser, give the appointment date and time.

I can't obtain advice within 30 days of returning this Reply Form because:

If it will take you longer than 30 days to get debt advice, explain on a separate piece of paper the reason for the delay and when you expect advice will be available.

NOW COMPLETE SECTION 4.

SECTION 4: What documents are you sending with this form? What information do you need?

Complete the boxes below if you want to provide or get more information.

Box H

I have provided documents.

Tick this box if you want to provide documents about the debt, for example you might want to provide a letter showing you have an appointment for debt advice or a receipt showing you paid some of the debt.

I have enclosed the following documents:

Describe on a separate piece of paper the documents you have provided and why they are important.

Box I

I need more documents or information.

I need a copy of:

Additional documents or information that you might need could include:

- *A copy of the written contract for the debt*
- *A full statement of account, including details of all interest and charges included on the outstanding balance of the debt, explaining how they have been calculated, and any payments already made toward the debt*
- *A calculation of the interest claimed*
- *The annual or daily rate of interest*
- *A description of the nature and amount of any administrative charges included in the debt*
- *A copy of the notice of assignment of the debt*

Signature:

Date:

Print name:

Sign and date this Reply Form once you've filled it in. Then send it to the address given in the letter from the business.

Make sure you keep a copy of this form for reference in the future.

Financial statement

Personal details

Name:	
DOB:	
Address:	
Postcode:	

Dependent children:	Under 16:	16-18:
Other dependants:		
Number in household:		
Housing status (i.e. owner, tenant etc.)		
Employment status (i.e. employed, unemployed, self-employed, retired, not working due to illness etc.)		

Income

	Amount (£)
Total income:	
Total outgoings:	
(Income - outgoings):	

Monthly income

	Amount (£)
Earnings:	
Benefits and tax credits:	
Pensions:	
Other income:	
Total monthly income:	

Monthly outgoings (fixed)

	Amount (£)
Home and content:	
Utilities:	
Water:	
Care and health costs:	
Transport and travel:	
Pensions and insurance:	
Professional costs:	
Other essential costs:	
Total (fixed costs):	

Monthly outgoings (flexible)

	Amount (£)
Communications and leisure:	
Food and housekeeping:	
Personal costs:	
Total flexible costs:	
Total monthly outgoings (fixed and flexible):	

Savings

	Amount (£)
Total savings	
Monthly savings contribution:	

Additional notes (e.g. reasons for debt, current circumstances, temporary situations):

(Use additional paper if necessary)

THIS FINANCIAL STATEMENT IS AN ACCURATE RECORD OF THE INFORMATION PROVIDED.

Signature:

Date:

Print name:

Letter 4: Without Prejudice Settlement

Dear [CUSTOMER]

Without prejudice save as to cost

I write further to previous correspondence. As you are aware there is an outstanding fee of *[AMOUNT]* on your account and this fee has been due since *[DATE]*.

While we fully reserve our rights and maintain the amount mentioned above is due in full, in order to try and resolve this matter amicably and without the need to instigate legal proceedings we are prepared to accept a payment of *[AMOUNT]* in full and final settlement of this matter.

This offer will remain open for the next 14 days, after which the offer is withdrawn. If you decide not to accept this offer, we reserve the right to bring this letter to the attention of the Court in relation to legal costs.

Yours sincerely