

Redmond Johnson

DEBT RECOVERY

LEGAL

NORTHERN IRELAND 2013

SMALL CLAIMS COURT – Limit £3,000

There are different stages for legal action against a debtor who owes less than £3,000.

First we issue proceedings through the small claims court. Fees run to a scale (see below). Once the application is lodged, they write to the debtor with details of the claim and give them a date they must respond by (usually about 5/6 weeks). This is called the 'return date'.

The debtor has a number of options -

- 1 - ignore the claim
- 2 - submit a Notice of Dispute
- 3 - lodge an Acceptance of Liability stating they will pay in full without delay
- 4 - lodge an Acceptance of Liability stating they need time to pay

If the debtor ignores the claim, judgment will be automatically awarded in your favour after the 'return date'

If the debtor submits a Notice of Dispute, then a new court date is arranged and both parties must attend before the District Judge. It's up to him/her to decide who the court will award in favour of.

If the debtor lodges an Acceptance of Liability, the courts will put a 'stay' on the case and judgment will not be awarded to allow sufficient time for the debtor to pay or make arrangements to pay in installments. If the debtor makes request for Time to Pay, they should at the same time submit their proposal and its up to you to accept or reject the offer. If you accept, we contact the debtor to confirm how and when the payments will happen. If the offer is rejected, the case goes before the district judge.

Once judgment has been awarded in your favour and only if the debt has not been paid, we apply for the default decree. This will allow us to proceed with enforcing the judgment.

Small Claims Court fees

| | | |
|------------------|---|---|
| Debts up to £300 | - | £30 (vat exempt) plus administration fees £15 (plus vat) |
| £301 - £500 | - | £50 (vat exempt) plus administration fees £15 (plus vat) |
| £501 - £700 | - | £70 (vat exempt) plus administration fees £15 (plus vat) |
| £701 - £3000 | - | £100 (vat exempt) plus administration fees £15 (plus vat) |

COUNTY COURT (claims up to £30,000)

Commenced with a Civil Bill drafted by the solicitor and stamped by the Northern Ireland Court.

This states that the debtor has 21 days to pay in full or lodge a dispute by lodging a Notice of Intention to Defend.

Once the court returns the papers, an Affidavit of Debt is prepared and sent to you to be sworn by the a representative of the client company and witnessed by their solicitor.

Court attendance in not required if the debt is undefended.

Once judgment has been awarded we can commence the enforcement process.

County Court To issue Civil Bill and obtain judgment for UNDEFENDED case - costs on application

HIGH COURT (claims over £30,000)

Action commences with the Writ of a Summons.

The debtor has 14 days to lodge a Memorandum of Appearance, then a further 21 days to lodge Defence.

An Affidavit of Debt is prepared and must be sworn by a representative of the client company and witnessed by their solicitor.

High Court Action - costs on application

STATUTORY DEMAND

A Statutory Demand is a formal request for payment and it gives the debtor 21 days warning to pay the debt. After 21 days it can be followed by a bankruptcy petition.

A Stat Demand can be served as soon as the debt is due and does not require a County Court Judgment (CCJ) to be issued first and it can be served without any court involvement. It can be fairly easy for the debtor to get the Stat Demand “set aside” if there is any dispute the court will halt the bankruptcy. This can result in an order for costs being made against the petitioning creditor.

The majority of Stat Demands that are issued are done so for “scare tactics” as it is assumed average debtor will normally be so scared having received on they will pay up. If a bankruptcy petition does not follow the 21 days notice then this would become apparent.

BANKRUPTCY PROCEEDINGS – WINDING UP PROCEEDINGS

If the debtor does not pay the statutory demand and you intend to carry on with debt-recovery proceedings, you will need to prove you have served the demand. One option is to employ a process server. A process server serves court and legal documents on behalf of:

- solicitors lawyers local authorities government agencies companies private individuals

If you're intending to present a petition for a bankruptcy order or winding-up order based on a statutory demand, the total debt must be more than £750. However, a number of creditors for smaller amounts can put their claims together to reach this minimum.

If the debtor does not settle the debt or reach an agreement for payment within 21 days from the date of serving of the statutory demand, or does not ask the court to set aside (dismiss) the demand within 18 days from the date of serving the statutory demand, you can ask the court to make a bankruptcy order or winding-up order. Bankruptcy proceedings must commence within 3 months from the expiration date of the statutory demand.

ENFORCEMENT OF JUDGMENT IN NORTHERN IRELAND (EJO)

Form 1 (Notice of Intention to Enforce) is lodged with the EJO (Enforcement of Judgments Office)

Once confirmation of service is received we must allow 10 days and up to 3 months to submit the Form 3 (Enforcement of Judgment). Costs for this depend on the value of the judgment and are billed to the EJO's scale.

We keep in regular contact with the EJO for information and updates and a copy of anything we receive is forwarded onto the client.

The EJO pursue all avenues to check and confirm the debtor's financial status. They make application to banks, social security, and other sources for information.

The debtor receives a Summons to Appear for Examination. They are to bring all their financial records and the Enforcement Officer will issue a report. Often, the debtor makes a payment proposal at this stage. The client is given a copy of the report and we will request for acceptance of the proposal. If the debtor fails to make a voluntary proposal, we can make an Attachment of Earnings - this of course is dependant on the employment status of the debtor and the realistic financial status.

On occasion, if the debtor is unemployed, earns lower than the acceptable threshold and does not own any property or land, the EJO is forced to issue a Certificate of Unenforcability. This means we are unable to recover the debt. However, the EJO keeps the file for review and will be able to pursue the debtor at a later stage should the debtor's financial circumstances improve.

There are sometimes additional charges with the EJO -

Should the debtor fail to appear for their examination appointment, the EJO give us a Conditional Order for Warrant of Arrest which is to be hand-served by a process server. We are obliged to give the debtor a viaticum for public transport. This cost varies depending on the bus route/train journey to the appointed court office.

Also, the EJO may supply us with an Order Charging Land. This allows us to secure the debt on property owned by the debtor.

Notice of Intention to Enforce - £20 (vat exempt) plus administration fees £15 (plus vat)

Enforcement Fees vary depending on the value of the awarded judgment.

Process server fees for hand delivery of papers - £100

To secure the debt with Order Charging Land - £260

For more detailed information on EJO enforcement contact us