

How to... Commence a debt claim

After exhausting your credit control procedure, sending out a letter of claim and trying to resolve matters amicably without success, you may consider it necessary to commence court claim against those troublesome debtors.

This is a short note setting out some useful tips and guidance on how to commence a simple debt claim. It is not designed to be exhaustive and should be used as guidance only. It is also not applicable to more complicated or non-monetary claims.

Starting (aka 'issuing') a Claim

The very first stage in commencing a claim is setting out the basis of your claim, using the appropriate court form. In debt claims you must complete a 'Claim Form' and 'Particulars of Claim'. There are two methods of commencing a debt claim, either via the County Court Money Claims Centre (the standard route) ("CCMCC") or Money Claim Online (the online route) ("MCOL"). There are slightly cheaper court fees to use the online service.

To issue your claim the standard route (i.e. through the post), the Claim Form and Particulars of Claim can be found on the court web site (www.gov.uk/government/organisations/hm-courts-and-tribunals-service). Alternatively, to use MCOL, you can access the form through the portal upon the MCOL website (www.moneyclaim.gov.uk/web/mcol/welcome).

The Particulars of Claim are contained within the Claim Form itself, or can be completed on a separate document, and attached to the Claim Form, if more space is required. They should deal with the following points (list not exhaustive):

- The full name and address of the debtor. Do not use abbreviations. Ensure that you have the correct spelling of the name and check the address. If a limited company, use the registered office as set out at Companies House.
- How the debt arose. This would include setting out the terms of the contract and explaining the goods or services supplied.
- A breakdown of the sum owed to you, including copies of any outstanding invoices.
- Whether you are claiming any contractual or statutory interest on the sum outstanding.

Once the Claim Form and Particulars of Claim have been completed, they need to be sent to the Court (or 'filed') to be issued and thereafter served upon the debtor. When commencing the claim, you must pay the appropriate court fee. The amount of the fee will depend upon the amount of the claim (the higher the claim, the higher the fee) and whether you use the CCMCC or MCOL. The current court fees can be found on the Court web site.

After the claim has been issued

Once the claim has been issued, the Court will serve the Claim Form and Particulars of Claim upon the debtor. The debtor will be given 14 days from the date of service to respond. The debtor can respond as follows:

- File an 'Acknowledgment of Service' ("AOS"); or
- File a Defence; or
- Admit the claim.

In completing the AOS, the debtor must file a Defence within 28 days of the date of service (the AOS gives the debtor an additional 14 days to respond).

If the debtor fails to respond, you are entitled to apply to the Court for a 'Judgment in Default' against the debtor. Once applied for (and if successful) the Court will send you a county court judgment (or 'CCJ') for the full sum claimed plus the Court fee and interest.

Should the debtor defend the claim, then it will usually be transferred to the nearest county court to the Defendant and a directions timetable will be set to prepare the case for a final hearing, at a later date. The timetable will usually include disclosure of documents, exchange of witness statements and a final hearing.

Some considerations before commencing a claim

- It is not advisable to start proceedings if you do not intend to see them through. There are consequences to discontinuing a claim, which may include you having to pay the debtor's wasted costs.
- The commercial viability of pursuing the claim. Will it cost you more in fees to pursue the claim than you will actually recover.
- If you intend on instructing solicitors to fight your claim, be wary of the small claims limit. Any claim with a value under £10,000 will be allocated to the small claims track meaning you cannot recover legal fees (save for in very limited circumstances).
- What are the chances of recovering the debt should a CCJ be obtained. Is the debtor 'good for the money'.

Andrews Ritson solicitors have a team that specialise in dispute resolution, including the issuing of county court claims. If you would like to discuss your claim, or how to issue a claim, in more detail please call Jason Round on 01746 769 700. Alternatively, email Jason at jround@andrewsritson.co.uk.

*This document is for informational purposes only and does not constitute legal advice. It is recommended that specific professional advice is sought before acting on any of the information given.