

Debt Law May 2023



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Aims and objectives

Aims

- ▶ To give delegates an overview of the debt issues that can affect clients and the new rules and options available.

Objectives

- ▶ By the end of the course delegates should be able to understand:
 - ▶ Whether the debts are priority or non-priority
 - ▶ The actions that can be taken for non-payment of debts by creditors including court enforcement
 - ▶ The law around enforcement agents
 - ▶ The main debt options available

Priority Debts

What's the worst that can happen:

- ▶ Loss of home
- ▶ Loss of liberty
- ▶ Loss of supply
- ▶ Loss of goods

Rent

- ▶ Stage of Action
- ▶ History
- ▶ Notice Period Checker
- ▶ Local Authority and Housing Association Landlords
- ▶ Private landlords and Notice to Quit
- ▶ Social landlords and notice of seeking possession
- ▶ Possession Hearing for Rent Arrears
 - ▶ Possession Order
 - ▶ Suspended Possession Order
 - ▶ Adjournment for Stated Time Period
 - ▶ Adjournment with Liberty to Restore
 - ▶ Dismissal

Mortgage and Secured Loans 1

- ▶ Stage of Action
- ▶ Tailored Support
- ▶ Mortgage Pre-Action Protocol (Appendix 1 - page 33)
- ▶ Offers
 - ▶ Norgan
 - ▶ 5 years repayment
- ▶ How to Offer Repayment
- ▶ Mortgage Arrears Fees
- ▶ Help with Mortgages, Secured Loans, Service Charges and Ground Rent for those on benefits
 - ▶ Nine months waiting period for all benefits apart from Universal Credit with 3 months
 - ▶ Interest only
 - ▶ Limited Help
 - ▶ Loan not benefit

Mortgage and Secured Loans 2

- ▶ Secured loan and Time Order
- ▶ Possession Hearing for Mortgage and Secured Loans
 - ▶ Possession Order
 - ▶ Suspended Possession Order
 - ▶ Adjournment
 - ▶ Dismissal
- ▶ Rent, Mortgage and Secured Loan Hearings
- ▶ Eviction
- ▶ Leaving the Property due to repossession or eviction

Council Tax

- ▶ Billing through to enforcement procedure
- ▶ Types of enforcement
 - ▶ Enforcement Agents - detail later in course
 - ▶ Attachment of Earnings Order
 - ▶ Attachment of Benefits Order
 - ▶ Third Party Debt Order
 - ▶ Attachment of Councillor's Allowances
 - ▶ Charging Order
 - ▶ Bankruptcy
 - ▶ Prison
- ▶ Council Tax liability
- ▶ Good Practice and Protocol
- ▶ Council Tax Support Fund

Gas and Electric

- ▶ Process for arrears
- ▶ Disconnection Rules
- ▶ Priority Services Register
- ▶ Arrears repayment offers
- ▶ Deductions from benefits
- ▶ Switching
- ▶ Grants

Hire Purchase

- ▶ Consumer Credit Act agreements
- ▶ Debt secured on an asset
- ▶ Third of credit
 - ▶ Recovery without court action
 - ▶ Return of Goods Order

Pawn Broker

- ▶ Loan secured against goods
- ▶ Shop Closures
- ▶ www.thenpa.com

Non-Priority Debts

- ▶ Tailored Support
- ▶ Stages of Action
- ▶ Debt Emergencies
 - ▶ Loan Sharks
 - ▶ Statutory Demand (Appendix 2 - page 37)
 - ▶ Court Money Claim
 - ▶ Debt Pre-Action Protocol letter of claim (Appendix 3 - page 38)

Statutory Demand
under section 123(1)(a) of the Insolvency Act 1986 [*]
under section 222(1)(a) of the Insolvency Act 1986 [*]
**[Delete whichever is not applicable]*

Warning

- This is an important document. This demand must be dealt with **within 21 days** after its service upon the company or a winding-up order could be made in respect of the company.
- Please read the demand and notes carefully.

Notes for Creditor

- The person making this demand must complete the whole of sections 1, 2 (including Part B if applicable) and 3 and the authentication (including the date) at the end.
- The details given in Section 1 must comply with rule 1.6 of the Insolvency (England and Wales) Rules 2016 (IR 2016).
- The Details of Debt (Section 2) must include all the relevant matters listed in the margin notes at Section 2. These should be set out in the order given unless the person completing the demand considers that a different order would be more convenient for the recipient.
- The creditor must give details of an individual with whom the Company can communicate about the Demand in Section 3.
- The authentication must comply with rule 1.5 of the IR 2016. If signatory of the demand is a solicitor or other agent of the creditor the name of his/her firm should be given.

Section 1 - DEMAND

To *[Insert details of Debtor Company]*

Name: *(The Company)*
[If registered, insert its registered name; if unregistered, its name]

Registered No. (if any):
[If incorporated in England and Wales under the Companies Act 2006 or a previous Companies Act, its registered number]

Address:

[If registered, insert its registered office; if unregistered, the postal address of any principal place of business]

*[Or, if the Debtor Company was incorporated outside the UK insert the following details]**

Country or territory in which incorporated:

Registered No. (if any):

No. (if any) under which registered under Part 34 of Companies Act 2006:
**[delete if not applicable]*

This demand is made under [section 123(1)(a)][section 222(1)(a)][*] of the Insolvency Act 1986 **delete whichever section is not applicable*
and is served on you by the creditor *[insert details of Creditor below]*

Name:
[If a registered company, insert its registered name; if unregistered, its name; if an individual, his or her full name]

Registered No. (if any):
[If a company incorporated in England and Wales under the Companies Act 2006 or a previous Companies Act, insert its registered number]

Address:

[If a registered company, insert its registered office; if unregistered, the postal address of any principal place of business; if an individual, his or her personal or professional address (as appropriate)]

*[Or, if the Creditor is a company incorporated outside the UK insert the following details]**

Country or territory in which incorporated:

Registered No. (if any):

No. (if any) under which registered under Part 34 of Companies Act 2006:
**[delete if not applicable]*

The creditor claims that the Company owes the sum of £
full details of which are set out in section 2 of this Demand.

County Court Judgment (CCJ) 1

- ▶ Debt Pre-Action Protocol (Appendix 3 - page 38)
 - ▶ Letter of claim
 - ▶ 30 days deadline
 - ▶ Possible responses
 - ▶ Box A - I owe the debt
 - ▶ Box B - I owe some of the debt but not all of it
 - ▶ Box C - I don't know whether I owe the debt
 - ▶ Box D - I dispute the debt

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 below 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 made in the past.

The amount of 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.

County Court Judgment (CCJ) 2

- ▶ Court Claim Form N1
 - ▶ Admission and Offer of Repayment
 - ▶ Creditor Accepts Offer
 - ▶ Creditor Refuses Offer
 - ▶ Redetermination of the Order
- ▶ Defence and Counterclaim of Debt
- ▶ Default Judgment
- ▶ Enforcement
 - ▶ Without default - Charging Order (Order for Sale) and Information Order
 - ▶ With default - Attachment of Earnings Order, Third Party Debt Order or Warrant of Execution for Enforcement Agents.
- ▶ Variation of the Order
- ▶ Return of Goods Order

Debt Defences for Court Forms

- ▶ Statute Barred
- ▶ Irredeemably Unenforceable
- ▶ Lacks capacity to enter agreement
- ▶ Liability
- ▶ Identity Fraud
- ▶ Undue Influence
- ▶ Payment Protection Insurance (PPI)
- ▶ Mis-Selling

Standard Financial Statement

- ▶ Websites for financial statements
- ▶ Free and FCA licensed online debt advice services
 - ▶ www.nationaldebtline.org
 - ▶ www.businessdebtline.org
 - ▶ www.debtfreeadvice.com

Enforcement Agents AKA Bailiffs 1

- ▶ County Court Judgments
- ▶ Council and Transport for London Parking Tickets
- ▶ Council Tax
- ▶ Magistrates' Court Fine
- ▶ Enforcement Agents - Rights of Entry for debts
- ▶ Enforcement Agents - Cars

Enforcement Agents AKA Bailiffs 2

- ▶ Fees where Debt Returned to Creditor
- ▶ Fees (non High Court)
 - ▶ Administration/ Compliance stage = £75
 - ▶ Enforcement stage = £235 + 7.5% of any debt over £1,500
 - ▶ Sale or disposal stage = £110 + 7.5% of any debt over £1,500 + Reasonable costs
- ▶ Fees (High Court)
 - ▶ Administration/ Compliance stage = £75
 - ▶ Enforcement stage 1 = £190 + 7.5% of any debt over £1,500
 - ▶ Enforcement stage 2 = £495
 - ▶ Sale or disposal stage = £525 + 7.5% of any debt over £1,500 + Reasonable costs

Enforcement Agents AKA Bailiffs 3

- ▶ National Standards for Enforcement Agents - Enforcement Agents have to adhere to the rules in the National Standards for Enforcement Agents which is available online. Some of the important points are:
- ▶ Time to Collect
- ▶ Hours to Collect
- ▶ Repayment Arrangement
- ▶ Vulnerability
- ▶ Behaviour and Conduct of Enforcement Agents

Notice of enforcement

This notice must be given by the enforcement agent or the enforcement agent's office

Please read this notice - it is important

Name of Debtor

Address

Date notice issued

/ /

Enforcement agent
reference number

About this notice You have been sent this notice of enforcement because you have not paid money that you owe.

Who you owe money to

The amount you owe them

Their ref./account no.
(if applicable)

Enforcement details

Details of the court judgment, or order or enforcement power by virtue of which the debt is enforceable

Sum outstanding

Debt

Interest

Compliance stage fee

**TOTAL sum
outstanding**

(as at the date of this notice)

Complaints and Ombudsman

- ▶ The Financial Ombudsman Service
- ▶ Other Ombudsman
 - ▶ Communications, energy, or property
 - ▶ Local Government Ombudsman
 - ▶ Housing Ombudsman

Debt and Mental Health Evidence Form

- ▶ Free to client
- ▶ Proves vulnerability
- ▶ Is good practice

Overview of Debt Options

- ▶ Take No Action
- ▶ Write Offs
- ▶ Payment Holiday/Moratorium
- ▶ Breathing Space
- ▶ Negotiated Agreement with Creditors
- ▶ Debt Management Plan (DMP)
- ▶ Debt Reorganisation/Consolidation Loan
- ▶ Voluntary Charge
- ▶ Full and Final Settlement
- ▶ Administration Order
- ▶ Debt Relief Order
- ▶ Bankruptcy
- ▶ Individual Voluntary Arrangement (IVA)

