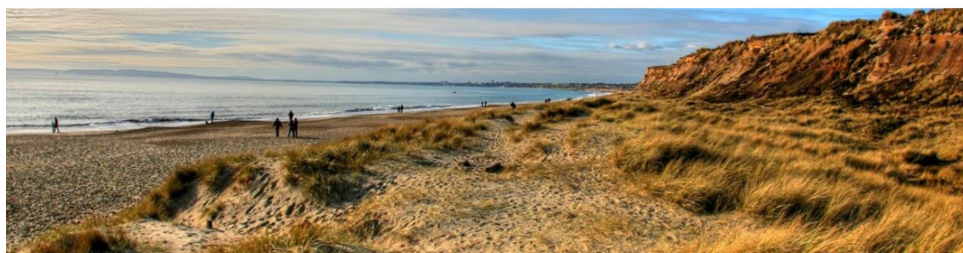


EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN ENGLAND AND WALES

From our member in Bournemouth



1. Pre-action protocol

Before making a claim to recover debt, the creditor must send the debtor a letter before claim, that is compliant with the Court rules. The letter before claim should set out the basis on which the claim is made, give a breakdown of the debt, enclose the documents on which the creditor relies such as invoices and

agreements under which the debt falls due and outline the next steps including the deadline for the debtor to respond by. The letter should also confirm that should the letter not be responded to, then the creditor will start Court proceedings.

There are different rules for consumer debts compared with business to business debts.

2. Issuing a claim

Should the debt not be paid, the creditor can issue court proceedings through a claim form.

The claim form should include the name and address of the creditor (Claimant) and the debtor (Defendant) along with brief details of the claim, the value of the claim and a statement of truth. The Claimant can also include some legal costs incurred recovering the debt as part of the claim.

The claim form should be accompanied by a set of particulars of the claim. The particulars itemise the claim and set out the grounds on which the debt is recoverable. The particulars of claim should also detail any interest payable on the debt and set out in conclusion exactly what the Claimant is claiming.

3. Interest

There are various ways to claim interest depending on the facts of the claim. The Claimant may claim contractual or statutory interest, together with limited compensation for late payment of certain debts.

4. Obtain Judgment

When the claim form has been issued the Defendant will be served with the claim and a response pack. The Defendant will have 14 days, from the date of issue, to complete a Defence, admit the debt on a full or part basis or simply ignore the claim.

If the Defendant fails to reply to the claim within 14 days, the Claimant can apply for ‘Judgment in default’.

If a defence is filed but the Claimant believes it has no chance of success, then the Claimant can make an application for summary judgment. The Claimant must prove to the court that the Defendant has no real prospect of successfully defending the claim, and there are no other compelling reasons for the case to be disposed of at trial.

If the Defendant replies to the claim on time, and no further interim applications are made, the case is likely to proceed to a trial. The case will proceed in accordance with a timetable either agreed by the parties or set by the court. The timetable will prescribe the steps that must be taken by certain dates including disclosure of documents, exchange of witness evidence and expert reports and ultimately preparation for a trial where the matter will be heard by a judge. At the trial, the judge will consider the evidence and listen to the submissions of both parties. They will decide any disputed facts in the matter on the ‘balance of probabilities’. This is the civil standard of proof in

England and Wales and essentially requires the court to determine whether it is more likely than not that something happened - i.e. 51% or more.

5. Enforce Judgment

If the Claimant obtains a Judgment, they can take steps to enforce it and there are various options available.

The Defendant will have 14 days to pay the Judgment debt unless the Judgment states otherwise.

The most common ways of enforcing a Judgment in England and Wales is through a bailiff or a charging order.

A bailiff will visit the Defendant to remove goods to sell at auction, in the absence of payment being received.

A charging order is where the debt is secured against any real property that the Defendant may own. The debt is secured against the property and will only be retrievable upon its sale. A separate application may be required to obtain an order that the property be sold.

6. Insolvency proceedings

When trying to recover a debt owed by a company or individual, that is unable to pay, insolvency proceedings are often considered.

A statutory demand is a written notice which demands that the debt be paid. A company will be deemed to be unable to pay its debts if a statutory demand for a debt of more than £750 is served on a company and they fail to pay the debt within three weeks. If the debt is owed by an individual a statutory demand can be sent but the debt must be over £5,000.

Compulsory liquidation, or winding up, is a process governed by the Insolvency Act 1986 , where a liquidator gathers the assets of the company, and distributes them among creditors. As a creditor of the company, the creditor will have the right to issue a winding up petition. The court will then decide, at a hearing, whether to make a winding up order.

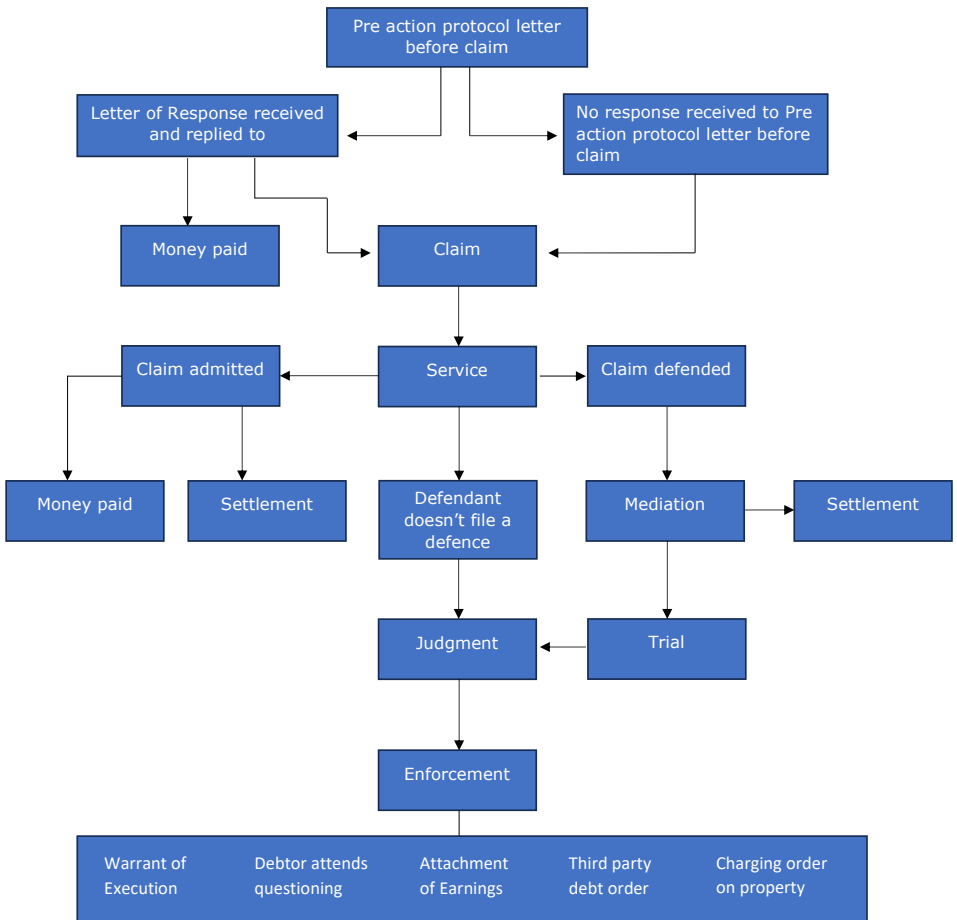
If someone is made bankrupt their assets will be sold to pay off their debts. If there are not enough assets to cover all of the debts the creditor will write off the balance and the debtor will have financial restrictions placed on them for a year.

7. Summary

Action should be taken by creditors promptly to recover debts and there is a 6 year limitation period to do so.

Trace agents can be used to find missing people if necessary and communication is always encouraged between the parties to reach a settlement and resolution as quickly as possible.

A quick reference flow chart for the County Court process is below.



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This is a brief rundown on the procedure for debt recovery in England and Wales

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