

Business debt recovery of unpaid invoices

Cash-flow is important to all businesses. A large proportion of that cash-flow comes from getting paid properly and in a timely fashion from individual consumers/customers or businesses who have received a service from you.

Cartmell Shepherd offers a transparent solution for recovery of unpaid invoices. Our debt recovery specialist, Carly Davies, works within our specialist Dispute Resolution team and is your main point of contact. Carly has over 15 years' experience in this area of law and handles all of our debt recovery cases, including business-to-business debts and debts owed by individuals. Wherever necessary, the team at Cartmell Shepherd can offer a full litigation service including advising on enforcement procedures, insolvency and bankruptcy.

Recovering debts can follow a straightforward process. Please note that this process only applies to the recovery of unpaid invoices where no dispute has previously been raised.

If a claim is defended on substantive grounds, or you have some other contractual basis for a claim, please contact us and we will provide you with an estimate of what work may be required and what the likely estimated costs will be.

The recovery of monies owed from unpaid invoices follows a set process as illustrated in the accompanying flowchart.

Stages of the process and our costs

Here we explain each stage of the process and our fixed prices for each of those stages.

Initial means enquiries

When this applies

There is no point in suing “a man of straw”. You could follow an entire court process and at the end of the day have a judgment in your favour with no way of actually recovering the monies owed to you.

This is why we offer an optional initial step of conducting tracing enquiries on the debtor to inform your decision making process.

For company debtors we can produce a risk report on the company free of charge, which will show the company’s standing based on a number of factors.

Detailed enquiries can be made against companies and individuals by instructing our recommended tracing and enquiry agents.

If you do not know the address of a debtor (say they’ve moved) we can also conduct tracing enquiries to find where they are.

What this costs

Cartmell Shepherd charges nothing for these initial steps. We only pass on the costs of our third-party agents for conducting tracing enquiries.

Address traces cost between £60 and £80.

More detailed financial enquiries cost between £80 and £100.

These costs must be paid upfront.

Business to individual pre-action letter

If you are a business seeking to recover a debt from an individual the Debt Recovery Pre-action Protocol (DR-PAP) will apply. This Protocol applies to any business (including sole traders and public bodies) claiming payment of a debt from an individual (including a sole trader).

Before commencing court proceedings the court rules require a specific process to be followed which is set out in the DR-PAP. This involves sending the debtor a formal 'pre-action letter' which must include certain information relating to the debt. The debtor has 30 days in which to respond and the option of paying by instalments must be offered. Attached to the letter is a reply form and a means assessment form which the debtor can complete and return if they dispute the debt or claim they cannot afford to repay it. The debtor is then allowed reasonable time to seek appropriate debt advice and make proposals for repayment.

What this costs

A DR-PAP 'pre-action letter' will cost £50 plus VAT.

What this covers

The fixed fee will cover all work up to and including either receiving a response to the letter of claim from the debtor or the time period for the debtor to respond expiring. It excludes advising you on any response received, negotiating a payment plan or reviewing your firms Terms of Business or otherwise checking the validity of the invoice.

This is assuming that the debt has arisen due to the non-payment of an invoice/invoices.

Business to business pre-action letter

When this applies

Unlike when an individual owes monies to a business the DR-PAP, described above, does not apply for business to business debts for non-payment of invoices. Before commencing court proceedings it is advisable to send a formal 'pre-action letter' to your debtor. The letter will include details of the debt and give the debtor company 14 days to respond. All we need from you to prepare the letter is a copy of the unpaid invoice.

What this costs

A formal "pre-action letter" will be charged at £30 plus VAT.

What this covers

The fixed fee of £30 plus VAT will cover all work up to and including either receiving a response to the 'pre-action letter' from the debtor or the time period for the debtor to respond having expired. It excludes advising you on any response received, negotiating a payment plan or reviewing your firms Terms of Business or otherwise checking the validity of the invoice.

This is assuming that the debt has arisen due to the non-payment of an invoice/invoices.

This cost estimate does not include debts which are governed by the Pre-action Protocol for debt claims (see business to individual pre-action letter).

Responding to a pre-action letter

When this applies

If a debtor responds to a pre-action letter setting out a dispute to the claim or asking for time to pay, you will have to consider this response and decide how you wish to respond.

You may:

- Respond to the debtor countering any allegations and continue to court if matters are not resolved
- Negotiate with a view to accepting proposals for payment
- Decide not to continue

What this costs

The costs of any necessary action dealing with a response will be calculated on the basis of the hourly rate of the person who will deal with matters (which will depend on the complexity of the matter and the value of the debt).

Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT. If the dispute appears to be substantive in nature, the costs of the full process will fall outside this debt recovery process (up to enforcement of any County Court Judgment) and a separate costs estimate will be given. Alternative funding options (including fixed fees) will also be considered.

If a response is received to a pre-action letter then we will advise you as to the hourly rate of the person who will deal with your case, and as a minimum suggest to you a 'fee cap' at a proportionate level to the value of your claim. We will not do any work once this 'fee cap' is reached allowing you to then decide if you want to continue (potentially with a new fee cap) or take no further action.

Statutory Demand

When this applies

Instead of pursuing a County Court action, you may decide to commence insolvency proceedings against the debtor. This option is only available to you if there is no genuine dispute over the debt (see 'Response to a statutory demand' below).

Risks

Proceeding down an insolvency route does carry significant risks. If the debtor is insolvent and made bankrupt (individual) or wound-up (company), you will rank as an unsecured creditor and recover only a percentage of what you are owed. The costs of a bankruptcy/winding-up petition (see below) are also significant.

However, if you think that you would consider insolvency as a way of enforcing a County Court Judgment you may obtain, this is a quicker and cheaper way of proceeding to that point.

What this costs

The fixed fee for preparing and serving a Statutory Demand is £150 plus VAT. The Demand will be served personally on the debtor by our agents who charge a fee of typically between £85 and £150 depending on the urgency of the matter.

What this covers

The fixed fee covers the drafting of the Statutory Demand document, arranging personal service of the demand on the debtor and reporting back to you either on receipt of a response to the demand from the debtor or the time period for the debtor to respond having expired. It applies to debtors who reside in England or Wales. It excludes demands where you do not want us to arrange service.

Response to a Statutory Demand

A debtor may respond to a Statutory Demand saying that there is a 'genuine dispute' over the debt. In that situation they can either apply to have the demand set-aside (if the debtor is an individual) or apply for an injunction to restrain presentation of a winding-up petition (in the debtor is a company).

At this time you may decide to consent to any application, or oppose it so you can continue with insolvency proceedings. If you consent to the application it can still proceed as a disputed debt and follow the County Court process.

Similarly, in receiving a statutory demand a debtor may enter into negotiations with you.

The costs of any necessary action dealing with a response will be calculated on the basis of the hourly rate of the person who will deal with matters (which will depend on complexity, availability, and value). Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT. Wherever possible, we will offer fixed fees for this work which can be calculated based on the response received.

Costs of negotiations alone are likely to be a few hundred pounds. Costs of responding to a Court application are generally in the region of £1,000- £2,000 excluding VAT; but are recoverable in the event of a successful outcome according to the general principles of cost recovery in the Courts. However it is worth noting that should the debtor have insufficient assets you may not be successful in

recovering these costs. If the debtor responds offering instalments or time to pay, negotiating a payment plan may be the most cost effective way of obtaining payment and is worth consideration should the opportunity arise.

Issue of proceedings

When this applies

If you decide to issue a County Court Claim for an unpaid invoice/invoices to obtain a County Court Judgment (CCJ).

What this costs

A fixed fee of £150 plus VAT and the relevant court fee which is based on the value of the claim. ([Please click here to see Form EX50](#) which shows the County Court fees for issuing a claim).

What this covers

The issue of the claim including the preparation of the claim form and particulars of claim, issuing online at the Government website [Money Claims Online](#) (MCOL), reporting to you either once the Defendant responds to the claim or the time period for the Defendant to respond having expired and advising you on your options regarding the continue of proceedings.

Assumptions & exclusions

This is assuming that the debt has arisen due to the non-payment of an invoice/invoices and covers claims up to the maximum value of £10,000 where the Claimant and Defendant are both based/resident in England or Wales and the debt has incurred in England or Wales. It assumes there is one Claimant and a maximum of two defendants and the Claim will be served by the Court. The fixed fee excludes preparing and serving separate, detailed particulars.

Separate fixed fees are available for debts exceeding £10,000 or where the MCOL procedure is not available or suitable ranging from £200 to £1,000.

Risks

It is important that you are aware that once court proceedings have been issued you become at risk for liability of costs. If a claim is defended (Defended Claim), you will either need to proceed to a trial; discontinue; or settle. Commencing court action commits you to the possibility of having to incur significant costs.

The costs of proceeding to a trial vary depending on the value of the claim and the complexity of the matter but it can be in the tens of thousands of pounds. You will be given personal advice on the potential costs prior to confirming your instructions to issue.

If you are successful in a defended case, some of your costs will be recoverable subject to the general principles on recovery of costs. If you are unsuccessful in a defended case, you may have to pay the other side's costs as well as your own.

If you decide to abandon ('discontinue') a case after you have issued, you will be liable to pay the other side's legal costs.

Any settlement will require an amount of compromise and you may not recover all of your costs or the full amount of your claim, but you will receive specific advice on the settlement within your case.

Defended Claim

When this applies

Once a claim is issued, the Defendant may enter a Defence and regardless of the merits of that defence it will have to be dealt with which will incur costs. On receipt of any Defence we will advise you as to the merits of it and options open to you. We will advise you of the potential costs of taking matters to a full trial or negotiating a settlement. At this point, after having assessed the future prospects of success, you may decide not to continue with the claim. This may have costs implications for you which we will advise on.

What this costs

The costs of any necessary action dealing with a Defence will be calculated on the basis of the hourly rate of the person who will deal with matters (which will depend on complexity, and value). Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT.

The costs of the full process will fall outside this standard debt recovery process (up to the enforcement of any CCJ you may have obtained) and a separate costs estimate will be given. Alternative funding options (including fixed fees) will also be considered.

Judgment in default

When this applies

If the Defendant does not respond to your claim you will be entitled to seek 'Judgment in Default', granting you a County Court Judgment (CCJ) without the need for a full hearing.

What this costs

A fixed fee of £75 excluding VAT. The court issue fee together with a figure of between £72 and £135 (dependent on the claim value) is added to the judgment as a contribution to your costs.

What this covers

Making an application for Judgment in Default, obtaining the Judgment and reporting to you once obtained. The above cost assumes the Defendant is resident in England or Wales. If the Defendant is resident out of the jurisdiction then a different process has to be followed to obtain judgment in default.

Costs exclude any correspondence with the Defendant or dealing with any application to have judgment set aside.

Risks

A Defendant can apply to have any Judgment obtained in default set-aside (cancelled) either on the basis that it shouldn't have been granted in the first place (for instance if the Defendant hasn't seen the claim because they have moved address; because they submit they have a 'real prospect' of defending the claim or because of some 'other good reason'.

If such an application is made we will advise you on the merits of this and your options of either opposing the application or consenting to it (which will result in the Claim continuing on a defended basis). The costs of dealing with any application will be charged on an hourly rate basis.

Judgment by admission

When this applies

The Defendant may admit the claim but ask the court for time to pay, including by way of instalments. The Defendant should provide a statement of their financial circumstances when making such request.

You will then be entitled to seek “Judgment by Admission”, granting you a County Court Judgment (CCJ) with the instalment amount either agreed or set by the Court.

What this costs

A fixed fee of £100 excluding VAT. The Court fee together with a figure of between £90 and £155 (dependent on claim value and whether the method of repayment is agreed or set by the court) is added to the judgment amount as a contribution to your costs.

What this covers

Taking your instructions on the Defendant’s payment proposal and responding to the court; then reporting to you once judgment is granted. It assumes that you either consent to the Defendant’s proposal or the Court determine matters on paper. It excludes the cost of any hearing for the judgment rate to be determined by a judge.

The above cost assumes the Defendant is resident in England or Wales. If the Defendant is resident out of the jurisdiction then a different process has to be followed to obtain judgment.

It excludes any correspondence with the Defendant to negotiate a payment plan.

Risks

If you accept the Defendant’s offer to pay by instalments and the Defendant adheres to the payment plan you will be unable to enforce the judgment other than by way of a Charging Order (see below). The Court may set a low amount to be paid each month which may mean that the time to pay off the debt in full may be substantial

Enforcement

(England & Wales only)

Once you have obtained your CCJ, the Defendant will be ordered to pay the CCJ within a specific period of time. If you do not receive payment you may need to commence enforcement proceedings to recover the sums owing to you. This will incur costs to you, some of which may be recoverable from the Defendant.

If the Defendant is not resident in England & Wales we will advise you separately as to possible methods of enforcement available to you and the associated costs.

There are several methods of enforcement, which in general can be used at the same time if you wish. The best method of enforcement will depend on the debtor's means and circumstances. The more information that is available regarding the Defendant the better, as this will assist us in assessing which method of enforcement may prove most effective.

We can, at this stage, undertake further enquiries to establish the debtor's means and circumstances.

There are two main options you could choose:

1) Tracing enquiry

We can instruct a tracing agent to conduct a means enquiry of the debtor (if not carried out at a pre-action stage).

What this costs

The costs of corresponding with a tracing agent in order to obtain a means/circumstances report on the debtor will be calculated on the basis of the hourly rate of the person dealing with your matter. Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT. If you require a simple desktop address trace the trace fee may be as low as £50 excluding VAT. For a more forensic trace with a detailed report may cost up to £300.

2) Order to attend court for questioning

Alternatively (or in addition if the tracing enquiry is inconclusive) we can apply for an Order that the debtor must attend court to be questioned about their financial means. The costs of dealing with an application for an Order to Obtain Information will be a fixed fee of £150 (excluding VAT) together with Court fees totalling £165.

What this covers

The fixed fee covers the cost of preparing the application with standard questions only, arranging for it to be Court bailiff served on the debtor, and advising you on the response received.

You have the option to ask specific questions of the debtor beyond the standard questions. You can also arrange for the debtor to be questioned before a Judge by a solicitor. These services can be provided at an extra cost.

If the debtor avoids service of the Summons to Court or engages in correspondence after they have received the Summons then work will be charged at our applicable hourly rate. The fixed fee does not include our attendance at Court.

High Court Enforcement

When this applies

High Court Enforcement Officers (HCEOs) have the power to attend a debtor's property and seize goods to cover the value of the debt if payment is not made in full. It applies to debts worth over £600 only.

Risks

High Court Writs of Control can be suspended or set-aside (cancelled) upon application by a debtor. The grounds for such an application can include an offer to pay by instalments.

The HCEOs will deal with a significant part of this application but some work will still be required by us.

Advantages

- Cheap
- Direct method of getting the debtor's attention

Disadvantages

- If the debtor has no assets of value, it will be unsuccessful
- The costs of selling assets (if necessary) will be taken first from any sale proceeds so you will only recover a percentage of their actual value

What this costs

The court fee for transferring a County Court Judgment to the High Court is £66. If successful the court fee and the fees of the HCEO are added to the judgment debt and are recoverable from the debtor. If the judgment is unenforceable the HCEO will charge an abortive fee of around £75 excluding VAT.

The costs of corresponding with the HCEO and reporting to you on the progress of the enforcement will be calculated on the basis of the hourly rate of the person dealing with your matter. Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT. The cost for corresponding with the HCEO is likely to be in the region of £50 to £300.

What this covers

This cost covers the initial cost of instructing the HCEO and if enforcement is successful reporting to you. It assumes the Writ will be successfully enforced within 12 months after which the writ will expire.

It excludes the costs of dealing with any direct correspondence from the debtor, any applications which may be made, or any extended enforcement.

County Court Bailiffs

When this applies

County Court bailiffs have similar powers to High Court Enforcement Officers (HCEOs) to attend a debtor's property. The process would involve applying for and obtaining a Warrant of Control warrant which would enable the County Court to instruct bailiffs to seize goods from the debtor's property which are then sold to pay the judgment debt. The Court fee for the warrant is currently £100.00. The bailiffs will attend on numerous occasions until either they are successful or the court deems it fruitless to continue.

Unlike HCEOs, bailiffs can enforce debts of any value.

Risks

County Court Warrants of Control can be suspended or set-aside (cancelled) upon application by a debtor. The grounds for such an application can include an offer to pay by instalments. We would have to deal with any application that is made which would incur costs.

Advantages

- Direct method of getting the debtor's attention

Disadvantages

- If the debtor has no assets of value, it will be unsuccessful
- The costs of selling assets (if necessary) will be taken first from any sale proceeds so you will only recover a percentage of their actual value
- Limited enforcement powers

What this costs

The court fee for obtaining a County Court Warrant of Control is £100. If successful the Court fee is added to the judgment debt and are recoverable from the debtor.

The costs of corresponding with the County Court bailiff and reporting to you on the progress of the enforcement will be calculated on the basis of the hourly rate of the person dealing with your matter. Standard hourly rates in our Dispute Resolution department range from £130 to £255 excluding VAT. The cost for corresponding with the bailiff is likely to be in the region of £50 to £300.

What this covers

This cost covers the initial cost of instructing the bailiff and if enforcement is successful reporting to you. It assumes the Warrant will be successfully enforced within 6 months.

It excludes the costs of dealing with any direct correspondence from the debtor, any applications which may be made, or any extended enforcement.

Attachment of Earnings

When this applies

If it is known that the judgment debtor is employed and who they are employed by, you can apply for an attachment of earnings order. This means that a lump sum is taken from the debtor's gross salary at source and paid directly to you meaning you are guaranteed to get payment.

It will be paid at the same frequency as the debtor is paid and the instalment amount will be decided by the court taking into account the debtor's means.

Advantages

- The money never is in the debtor's hands so you will get payment

Disadvantages

- If the debtor changes employment, the Order stops having effect and a new application must be made for the new employer.
- The process of obtaining an actual Order is prolonged, as the debtor is given the opportunity to agree instalments first

What this costs

The court fee for applying for an Attachment of Earnings Order is £110. If successful the court fee will be added to the judgment debt and is recoverable from the debtor.

The fixed fee for making the application is £200 excluding VAT.

What this covers

The fixed fee covers the drafting of the Attachment of Earnings Order, making the application to the Court, service of the order on the employer, corresponding with the employer and reporting back to you.

Assumptions and exclusions

It assumes the application is successful and that the employer co-operates with the process. It excludes the costs of dealing with any direct correspondence from the debtor, any applications which may be made, or any extended enforcement. It assumes that you have knowledge of the debtor's employment. It excludes obtaining information regarding the debtor's employment. If you require this service please see the section above for how this information can be obtained.

Third Party Debt Order

When this applies

The basis of this process is that if you know the debtor is owed money by a third party you can ask the Court to command the third party to pay that money directly to you rather than to the judgment debtor. The most common situation occurs where it is known that the debtor has a bank account with a credit balance and so the bank will be named as the third party it can however apply to any third party who has money which “belongs” to the debtor.

Advantages

- Recover money without needing any co-operation from the debtor
- Simply freezing an account can prompt action by a debtor

Disadvantages

- Can be speculative
- If the debtor withdraws money from the bank before an Interim Order is served on it the account will not be frozen and the application will have been worthless

What this costs

The court fee for applying for a Third Party Debt Order is £110. If successful the court fee will be added to the judgment debt and is recoverable from the debtor, together with £98.50 as a contribution to your costs.

The fixed fee is split into two stages. Stage 1 is £200 excluding VAT. Stage 2 is £150 excluding VAT.

What this covers

The Stage 1 fixed fee covers the drafting of the Third Party Debt Order, making the application to the Court, service of the interim order, considering the third parties response and reporting back to you. If the Third Party states no money is held no further action need be taken.

The Stage 2 fixed fee covers attendance at Court, and obtaining the final order. It assumes the application is successful and that the Third Party co-operates with the process. It excludes the costs of dealing with any direct correspondence from the debtor, any applications which may be made, or any extended enforcement.

Charging Order

When this applies

If it is known that the debtor owns a property we can seek to register a charge against that property in a similar style to a mortgage. If in the future the debtor decided to sell or re-mortgage you should receive part of the proceeds of sale (if any exist) to offset or discharge the debt. If you choose to take this route you may not see an immediate benefit as the debtor may not sell the property or re-mortgage for some time. If you think that this will be the case you can apply to the court to force the sale of the property in order that the debt is paid however the court is unlikely to grant an application in the case of a lower value debt.

Advantages

- Provides good security
- Can be used even if the judgment provides for money to be paid by instalments

Disadvantages

- Does not actually recover the monies owing
- Unless the debtor(s) are the sole beneficial and legal owners of land the restriction that can be placed preventing a disposition of the asset has limitations
- Your charge ranks behind any existing charges (e.g. mortgages) so if a property is in negative equity you will not recover anything even on a sale

What this costs

The court fee for the application is £110. There will also be fees payable to HM Land Registry which will be £23 per title.

The fixed fee for making the application is £250 excluding VAT.

If successful the court fee, Land Registry fees and a £110 contribution to your costs are added to the judgment and charge.

What this covers

- Investigations as to Registered Title
- Applying for a Charging Order
- Registered an Interim Charge at Land Registry
- Writing to the court to obtain a Final Charging Order

It excludes:

- Any court hearing that is requested or required
- Any application relating to unregistered land
- Registration of a Final Charge at Land Registry (which is not required for registered land)

Bankruptcy or Winding-Up

When this applies

An unpaid County Court Judgment or unsatisfied Statutory Demand is evidence that someone is unable to pay their debts as they fall due and are therefore insolvent. You can therefore petition for their bankruptcy (personal) or apply for winding-up (limited company who owes you more than £750).

Risks

If the debtor is genuinely insolvent, you may only rank as unsecured creditor and risk recovering only a percentage of what you are owed and none of the costs of the petition which you will have paid.

If the petition is successful the winding-up process can take some time; and the office-holder will have to investigate former transactions to see if funds can be recovered to pay into the Estate/Company.

A debtor can also oppose a bankruptcy petition which would need to be dealt with.

What this

The court fee for the application is £280. There will also be a deposit payable to the Official Receivers' Office of £990 for bankruptcy or £1,600 for winding-up.

The fixed fee for making the application is £250 excluding VAT.

What this covers

- Preparing the petition
- Issuing this at court
- Arranging service of the petition

It excludes:

- Attending any petition hearing (a fixed fee of £100 excluding VAT is offered where the hearing is in Carlisle or West Cumbria, otherwise agency or Counsel's fees will apply)
- An opposed Bankruptcy Petition
- Liaising with the Official Receiver or other office holder after a petition is successful
- Petitions issued for any reason than non-payment of a debt following service of a Statutory Demand or obtaining a CCJ