

## Litigation: debt recovery prices

### Our fees for low value debt recovery

In accordance with the Transparency Rules set out by the Solicitors Regulation Authority, we set out below the anticipated costs for our commercial (i.e. business to business) debt recovery work for claims up to the value of £100,000 against debtors located within England and Wales. Costs for debt claims above this value are available on request.

It is important to distinguish between debt claims which are disputed and those which are undisputed. In essence, an undisputed debt claim is a claim in which no factual or legal issues are rightly regarded as being in dispute and there therefore is no real doubt that the debt is due as a matter of fact and law. Conversely, disputed debt claims are claims in which there is a proper factual or legal basis upon which to dispute that the debt is due.

It is impossible to accurately predict the costs involved in pursuing a disputed debt claim to conclusion at the outset. This will be dependent on a number of factors which are often unknown (or partially unknown) at the outset of the claim, including how the debtor will respond to a formal demand for payment from us, the evidence which they may have to dispute the claim, whether it is necessary to issue proceedings, and how protracted any negotiations become. For disputed debt claims of this nature, we will provide estimates for discrete phases of work where we sensibly can do so, and charge for our work on a time cost basis, as outlined above.

However, for undisputed debt claims, it is possible to estimate the overall costs involved with greater accuracy, as such claims will proceed in a more predictable manner. The focus of what follows is therefore on the estimated costs of pursuing **undisputed** debt claims.

The costs below are the **average** costs where the claim is for unpaid debts/invoices which are not disputed and enforcement action is not needed. When you instruct us we will provide a more accurate estimate of the anticipated costs for your particular case and this will depend, amongst other things, on the volume of documentation to review and the seniority of the Associate handling the matter.

If the other party disputes your claim at any point, we will discuss the further work required and have a further discussion with you about the costs to be incurred (based on the circumstances of your case and the work anticipated to be required) and we will provide you with further estimates as described above.

### Undisputed debt claims

There are broadly two routes to deal with undisputed debts:

- (i) Issuing a debt claim at Court and seeking summary Judgment or (if the debtor fails to respond to the claim) Default Judgment at the first opportunity; and
- (ii) Issuing a Statutory Demand and, in the event of non-payment, pursuing Winding Up or Bankruptcy proceedings thereafter.

Before pursuing either, it is usually a requirement to send a formal Letter Before Claim or Pre-action letter.

### *Pre-action/letter before action*

We will agree an initial fee with you for reviewing any documents and correspondence supplied by you and writing an initial letter before action, claiming payment of the debt on your behalf. Depending on the amount of documentation which you provide, our fee is likely to be in the region of £1,000 - £3,500 (plus VAT and disbursements).

#### *(1) Issuing a court claim*

If payment is not forthcoming, you may then wish to proceed with issuing Court proceedings to recover the debt. This will involve drafting a Claim Form and Particulars of Claim and, in straightforward undisputed debt claims, we would anticipate our fee for preparing this documentation will be in the region of £2,500 - £5,000 (plus VAT and disbursements).

There is a Court fee for issuing a claim, depending on the value of the value of the claim (and whether the claim is issued on paper (as is our usual practice) or if it is suitable to issue online (via Money Claims Online, “**MCOL**”).

It may also be that we need to involve Counsel (i.e. a barrister) in preparing the Court documentation. Further details of the Court fees and Counsel’s fees are set out below in the *Disbursements* section below.

A Defendant (the debtor) will have 14 days from receipt of the Claim Form and/or Particulars of Claim in which to respond by filing an Acknowledgement of Service or a Defence.

#### *Default judgment*

If the Defendant does not respond in time you can request judgment for the claim debt in default.

If an Acknowledgement of Service is filed within 14 days of service of the Claim Form, the Defendant then has a further 14 days to file a Defence to the claim. If the Defendant then fails to file a Defence, you can also request that judgment can be entered in default.

Our average range of fees for i) applying to the Court to enter judgment in default against the debtor (where no Acknowledgment of Service or Defence is received); ii) when judgement in default is received, writing to the other side to request payment; and iii) if payment is not received within 14 days, providing you with advice on next steps and likely costs, are likely to be £2,000 - £4,000 (plus VAT).

#### *Summary judgment*

In the event that the debtor does file an Acknowledgment of Service and/or Defence, but it appears that they have no real prospect of successfully defending the claim and there appears to be no other compelling reason why the case requires a full trial then, we would apply for Summary Judgment of your claim. This would involve a formal application, supported by written evidence and attending the Court for a hearing, for which we would instruct a junior Barrister. Our estimated average costs for i) preparing the application; ii) instructing the Barrister; and iii) attending a hearing of 1 hour are likely to be £3,000 -

£5,000 plus VAT. In addition, there would be Barrister's fees, of which we will obtain an estimate for you in advance.

### *General*

Anyone wishing to proceed with a claim should note that:

- Interest and compensation may take the debt into a higher value banding, with a higher cost.
- The costs quoted above are not for matters where enforcement action, such as a bailiff, is needed to collect your debt.

### *(2) Statutory demands, winding-up petitions and bankruptcy petitions*

Rather than issue Court proceedings, for an undisputed debt, often the most time and cost effective step may be to serve a statutory demand on the debtor company or sole trader (providing the debt is over £750 where the debtor is a company, or over £5,000 where it is an individual / sole trader). Depending on the circumstances, this can be served on the debtor either before or after a letter before action.

A statutory demand is not in itself a court process but is a formal demand for payment which must be taken seriously and can be used as a precursor to insolvency-based proceedings, such as a winding up petition against a company or bankruptcy proceedings against an individual / sole trader (see below). It provides a period of 21 days after service for payment of the debt.

A statutory demand should only be used in circumstances in which it is entirely clear that the underlying debt is genuinely undisputed; for example, if the debt is admitted or if there is a judgment for it.

Our average range of costs for preparing a statutory demand are £1,000 - £2,500 (plus VAT and disbursements).

### *Winding-up proceedings*

For a debtor company, if payment is not forthcoming after service of the statutory demand within the specified 21 day period and provided the debt is not subject to a genuine dispute or can be extinguished by a valid cross-claim by the debtor, it may be appropriate to present a winding up petition against the company owing the debt. Winding up petitions can also be used where the debt is based on a Court judgment which has not been set aside or appealed.

Our average range of costs for preparing, presenting, and serving a winding up petition are £2,500 - £3,500 (plus VAT and disbursements).

Once the petition has been presented, there are a series of prescribed steps to be taken (including, for example, formally advertising the presentation of the petition) and there will be a Court hearing. If the petition is successful the Court will issuing a winding up order at this hearing. Our average range of costs for taking such steps and preparing for that hearing (including instructing a junior Barrister to appear at the hearing) are £2,000 - £3,500 (plus VAT and disbursements).

Thereafter, the Court will put an Official Receiver in charge of the liquidation. They'll start the process of gathering in and liquidating the company's assets so that the proceeds can be used to pay the company's debts. Other creditors can register their claims to money they are owed by the debtor company; accordingly, the level of realisation and repayment received from the liquidation process is often uncertain

If the winding up petition is disputed, we will provide further estimates for our costs for dealing with the matter.

### ***Bankruptcy proceedings***

If you have obtained a Court judgment that has not been set aside or appealed, or if a statutory demand has been validly served and not set aside, a bankruptcy petition can be presented against an individual or sole trader debtor.

Our average range of costs for preparing, presenting and serving a bankruptcy petition are £2,500 - £4,500 (plus VAT and disbursements). The procedure following presentation of a bankruptcy petition is similar to those to be taken after presentation of a Winding-Up petition and our range of costs for carrying out that work will be of the same order.

### **Disbursements**

Please see below a non-exhaustive list of the disbursements you may need to pay:

#### **Process server fees**

We will usually instruct a process server to serve the statutory demand.

Likewise, a process server may be used to serve the Claim Form and Particulars of Claim and/or a winding up or bankruptcy petition.

Typically, and on each occasion, process server's fees will be in the region of £100 - 300 plus VAT.

### Court issue fees (no VAT is charged)

Value of your claim				Fee payable	
				Court issued claim	Filed via SDT/MCOL
Up to	£300			£35	£25
Greater than	£300	but no more than	£500	£50	£35
Greater than	£500	but no more than	£1,000	£70	£60
Greater than	£1,000	but no more than	£1,500	£80	£70
Greater than	£1,500	but no more than	£3,000	£115	£105
Greater than	£3,000	but no more than	£5,000	£205	£185
Greater than	£5,000	but no more than	£10,000	£455	£410
Greater than	£10,000	but no more than	£15,000	5% of the value of the claim	4.5% of the value of the claim
Greater than	£15,000	but no more than	£50,000		
Greater than	£50,000	but no more than	£100,000		
Greater than	£100,000	but no more than	£150,000		
Greater than	£150,000	but no more than	£200,000		
Greater than	£200,000			£10,000	N/A

### Counsel's fees

Depending on the value of the debt (and whether it is disputed or not), we may wish to instruct Counsel (i.e. a Barrister) on your behalf (and with your approval) to assist with tasks such as drafting Court documents and conducting advocacy in the courtroom.

Counsel's fees vary. However, we will always seek to ensure that Counsel's fees are commensurate with the value you are seeking to recover, and we will obtain fee quotations in advance on your behalf.

Please note, VAT would be payable on Counsel's fees.

### Insolvency proceedings fees

**Winding-up petition:** To commence insolvency proceedings against a debtor company by issuing a winding up petition, the following fees will apply:

- Court fee £280
- Official Receiver's deposit\* £1,600

\*If the debtor pays the debt and the petition is withdrawn or dismissed, the Insolvency Service should provide a refund of £1,550 for this fee after a period of time.

**Bankruptcy petition:** To commence insolvency proceedings against an individual / sole trader debtor by issuing a bankruptcy petition, the following fees will apply:

- Court fee £280
- Official Receiver's deposit\* £990

\*If the debtor pays the debt and the petition is withdrawn or dismissed, the Insolvency Service should provide a refund of £940 for this fee after a period of time.

## Anticipated timescales

The period of time from receipt of instructions from you to receipt of payment from the other side depends on whether it is necessary to issue a claim and whether the other side pays promptly.

However, typical durations might be as follows:

- 1 month to 6 weeks if a letter before action is sent and the debtor makes payment shortly after receipt of this (including our time for taking instructions and drafting the letter before action).
- 3 to 6 months to obtain a judgment in your favour (through issuing and serving a claim, and subsequently applying for summary judgment/default judgment).
- If you opt to pursue the insolvency proceedings route following service of a statutory demand, it will typically take 3 to 4 months to obtain an order that the debtor company be wound up or the individual / sole trader debtor be made bankrupt.

## Enforcement action

In Court proceedings, if you obtain a judgment in your favour, the debtor will then have a short period (usually 14 days) within which to pay the debt. If they do not do so, you would be entitled to take enforcement action (e.g. through taking control of the debtor's goods, applying for a charging order over the debtor's assets, or applying for an attachment of earnings order).

If enforcement action is needed, further substantive work will be required (most likely, including applications to the Court) and the matter will take longer to resolve, resulting in increased costs (in respect of both our fees and further disbursements, including Court fees for any hearings and/or enforcement action). In these circumstances, wherever possible, we will provide you with further estimates of our fees and any anticipated disbursements.