

Debt Recovery



The Complete Law firm

www.wilson-nesbitt.com

Debt Recovery

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Debt Recovery

Our computerised debt recovery system

Our specialist debt recovery team operate a state-of-the-art computerised recovery system which offers:

- An IT driven service that puts recovering your money at the top of its priority list.
- A formidable reputation coupled with a results driven approach.
- An emphasis on convenience – choice of communication by phone, fax, email/internet.
- Increased efficiency, which means cost savings, can be shared with our clients.

Our online service offers secure internet access to instruct, monitor and report on any debt matter at your convenience, 24 hours a day, 7 days a week.

- Convenient, easy to use online facility
- Secure, password entry
- Customised report on specific queries or entire caseload updated daily
- View each individual case history online.

This service is available to our clients as an extension to our existing debt recovery service.

Visit our website www.wilson-nesbitt.com for a demonstration

Debt Recovery

Know your debtor

“Look Before You Leap”

There is often little point instigating debt action if the debtor is a ‘man of straw’ ie has no income or assets to discharge the debt.

There are a number of important questions, which you must consider therefore before commencing debt proceedings.

- ◆ Are your own Credit Control measures adequate?
 - ◆ Do you have suitable Terms & Conditions? If not, do you require legal assistance to draft same? We can help!
 - ◆ How old is the debt? You have 6 years from the date of any Agreement/Contract/Invoice to instigate court proceedings to recover a debt.
 - ◆ Has the debtor sufficient income or assets to discharge the debt?
 - ◆ Do you know whether the debtor owns property jointly or otherwise?
 - ◆ Are there any previous Court Judgments against the debtor?
 - ◆ Have they been paid? If so, what was the outcome?
 - ◆ Have Enforcement Proceedings been instituted against the debtor?
 - ◆ If the debtor is a Limited Company, -
 - what is its full title, registered office and other trading addresses?
 - does the company own or lease the premises?
 - what assets does it own?
 - ◆ do you have any knowledge of its general performance and/or credit history?
- ◆ If the debtor is a Partnership, -
 - what is the full trading title and business address?
 - what are the names of the various partners and what assets are owned?
 - do you have any knowledge of the general performance and/or credit history?
 - If the debtor is an individual/sole-trader, -
 - what is his/her full name and trading address?
 - what is his/her home address?
 - what assets are owned?
 - do you have any knowledge of his/her credit history?
 - If not, a business debt, is he/she in gainful employment?
 - How did the debt arise?
 - ◆ What evidence exists to “prove” the debt?
 - Invoice,
 - Terms and conditions,
 - Correspondence,
 - Retention of title clause,
 - Verbal evidence only?

Debt Recovery

Preliminary Steps

There are a number of Preliminary Steps which you may wish to consider before instigating full court proceedings:

Option A: Sending a Solicitor's Letter Before Action (LBA)

And/or

Option B: Undertake searches and/or enquiries on the debtor to assess whether the debtor might have sufficient income/assets to warrant proceeding further.

Option A: Letter Before Action

A relatively inexpensive measure is to send a Solicitor's Letter Before Action (LBA). This letter demands payment within seven days and puts the debtor on written notice that failure to pay will lead to legal proceedings being instigated without further notice or warning. It is our practice to issue such a letter upon the day we are instructed (if instructions are received after 3.30pm the letter will be sent the following day). Our Case Management System will generate a threatening reminder letter to the debtor on the seventh day.

This letter can sometimes produce results! However, if there is no satisfactory response within 3 days of the reminder letter, we will revert to you for your instructions. Please refer to our fee structure.*

Collection Fee

Where monies are recovered as a result of the LBA, additional fees will be charge.*

Option B: Status Checking on the Debtor

Status checking or credit checking on a Debtor before instigating court proceedings is highly recommended. There are a number of preliminary enquiries that may be undertaken and which may help guide you in deciding whether to instigate proceedings. These costs are not recoverable from the debtor.

* Please refer to our pricing structure

- EJO and Bankruptcy Searches should help indicate whether the debtor is already a bankrupt, or whether there are Enforcement Proceedings registered against them.
- A Company Search may help identify the Directors, registered office, when accounts were last filed etc.
- If the property is Registry of Deeds, then a Registry of Deeds Search may help to identify whether property is actually owned by the debtor. However, a computer search will only show negative actions, such as mortgages and other charges, against a particular property, and only after computer records began in 1990. It will not show any results if a property has been bought outright, without a mortgage.
- If the property is Land Registry, a Land Registry Search may help to show any mortgages/charges and any pending dealings on Folios.
- ◆ The Worth Suing Report will seek to obtain details of the Debtor's income and assets, and make an assessment on lifestyle and on the likelihood of obtaining payment if Court proceedings are instigated. We would recommend that a Worth Suing Report is obtained where the debt exceeds £3,000.

If proceedings are issued, and/or judgment is obtained, and/or Enforcement Proceedings commenced and ultimately the debtor proves to have insufficient income or assets, you still remain liable for our legal costs.

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Court Proceedings

Small Claims Court:	Debts up to £3,000
County Court:	Debts up to £30,000
High Court:	Debts exceeding £30,000

Small Claims Court Proceedings

Debts up to £3,000

Obtaining a Judgment in the Small Claims Court is a paper exercise, insofar as your case will only be heard if your claim is disputed, or a counterclaim issued or an unacceptable repayment proposal is made by the debtor.

Procedure:-

We will prepare an Application for Arbitration, send it to the relevant court, together with the appropriate court outlay. Please note that this outlay is added to the debt if your application is successful and judgment awarded.

Your Application will be endorsed by the Court office with a return date, (usually 3–4 weeks thereafter), and a copy of the endorsed Application will be sent to the debtor. We will receive a copy along with an Applicant's Information Pack. The debtor must lodge a dispute/ counterclaim or make payment prior to this return date.

- ☐ **Should the debtor pay:** they are liable to pay the total amount claimed, applicable interest, together with the court outlay incurred. **The debtor will not be liable for our fees.**
- ☐ **Should the debtor fail to respond:** we will obtain an Application for Default Decree, send to you for completion and return to our office so that we can make an Application to the Court, for Judgment,

which we will then serve on the debtor by first class post. The Judgment will include the amount awarded by the court (normally the amount of debt outstanding) together with the Court Outlay, applicable interest and interest. It will not include our fees. The Judgment will be registered against the debtor at the Registry Trust, England and will affect the debtor's ability to obtain credit in the future. If the debtor does not make payment, you may wish to consider Enforcement Proceedings (see Enforcement Section).

- ◆ Should the debtor lodge a dispute/counterclaim: your case will be given a date for hearing before the District Judge. It is imperative that you attend this hearing and bring all paperwork to prove the debt. These proceedings are relatively informal and you can represent yourself at the Small Claims Court but you may also have legal representation. Should you require legal representation, win or lose, you will be responsible for paying our costs. A cost estimate will be provided in each individual case but costs are likely to be in the region of £150-£200.
- ☐ Should the debtor lodge an Acceptance of Liability: this means that the debtor has admitted that they owe the debt, but are unable to make full immediate payment to settle this matter. Therefore, they are asking the court/you for time to pay.
- ☐ Should you not accept this offer, the matter will be listed before the District Judge for directions.
- ☐ Should you agree to the offer, a Stay of Execution will be attached to the Order. Please note that enforcement is not possible until this has been removed.

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- Should the debtor then default in any weekly/ monthly payments, the Stay of Execution can be removed by way of signed Affidavit, a full Judgment obtained and served on the debtor.
- If the debtor does not make payment, you may wish to consider Enforcement Proceedings (see Enforcement Section)
- No legal fees are awarded by the Small Claims Court.

Worked Example:

Debt of £1,500 due and owing from 7 June 2009 and awarded on 7 October 2010 by the court.

Amount of Entitlement and Award

Principal Sum	£1,500.00
Court Outlay	£100.00
Interest @ 8% p.a.	£160.11
Judgment for	£1,760.11

Remember the court does not pay the amount that is awarded, it only decides who is liable.

Debt Recovery

County Court Proceedings

Debts up to £30,000

Obtaining a Judgment in the County Court can be a paper exercise, unless your claim is disputed.

Procedure:

We will prepare a Civil Bill, which is sent to the relevant court together with a cheque for the court outlay; it will then be stamped by the court and served on the debtor or their solicitor. The Debtor has 21 working days after service in which to lodge a Notice of Intention to Defend.

□ **Should the debtor pay within 21 days** of receiving the Civil Bill, the Debtor will be liable to pay you the principal sum, applicable interest and recoverable fees awarded by the court (these are known as 21 day costs which are prescribed by statute). You remain liable for our professional fees, but these will be offset by the recoverable fees awarded by the court.

◆ **If the matter is undefended**, ie. the debtor fails to respond within 21 days. We will send an Affidavit of Debt to you, which must be sworn in the presence of a solicitor. Once this has been returned to us, all the relevant paperwork together with a cheque for the court fee for marking judgment of £62.00 will be sent to the court and a County Court Judgment (CCJ) will be obtained. This option does not normally require your attendance at court. Once a County Court Judgment has been obtained the debtor is liable to pay the principal sum, applicable interest and a higher scale of recoverable costs. Our fees will apply and will be offset by the recoverable costs.

□ **If a Notice of Intention to Defend is received**, then the debtor has signaled an intention to dispute the debt and the matter will be passed to our Litigation Team. In this event, the issue of costs is one to consider very carefully, as our fees for a contested matter are marked in accordance with the County Court Scale Fees, which are significantly higher. If you were to lose a contested case, you would be liable for not only our costs but also the debtor's legal costs, which can be considerable. The Litigation Team will advise more fully in this event.

In a contested case, if you are successful, additional professional fees as appear in the County Court Rules will be added to the Debt and may be recoverable from the Debtor if recovery is achieved.

Remember the court does not pay the amount that is awarded, it only decides who is liable.

Debt Recovery

High Court Proceedings

Debts Exceeding £30,000

A Writ of Summons may be issued for any debt above £600, but may be transferred to the County Court, should the debtor object and/or to minimise costs. Again, obtaining a Judgment in the High Court can be a paper exercise unless your claim is disputed.

Procedure:

We will prepare a Writ of Summons, which is sent to the court together with a cheque in respect of the court outlay; It will then be stamped by the court and we will serve a copy on the debtor or their solicitor. The Debtor has 14 days after service in which to lodge a Memorandum of Appearance.

- Should the debtor pay within 14 days of receiving the Writ of Summons, the Debtor will be liable for the principal sum, applicable interest and recoverable costs.
- If the matter is undefended, ie. the debtor fails to respond, we will send the relevant papers together with payment to the court and a High Court Judgment will be obtained. This option does not normally require your attendance at court. Once a High Court Judgment has been obtained, the debtor is liable to pay the principal sum, applicable interest and a higher scale of recoverable costs.
- ◆ If a Memorandum of Appearance is received, then the debtor has signalled their intention to dispute the debt and the matter will be passed to our Litigation team. In this event, the issue of costs is one to consider very carefully as if you were to lose a contested case, you would be liable for not only our costs but also the debtor's legal costs, which can be considerable. If the Writ has been issued for less than £15,000 then the actions

action can be remitted to the County Court, to save costs.

In a contested case, if you are successful, additional recoverable costs awarded will be added to the debt and should be recoverable from the Debtor, if recovery is achieved. If the debtor doesn't pay, you may wish to consider Enforcement Proceedings (please see Enforcement Section)

Remember the court does not pay the amount that is awarded, it only decides who is liable.

Debt Recovery

Enforcement proceedings

A Court can only decide on liability and quantum and issue a Judgment. It cannot compel a debtor to make payment pursuant to the Judgment. Should a debtor fail to pay following Judgment, the only way to pursue further recovery is to refer the matter to the Enforcement of Judgments Office, or the EJO, as it is known.

The EJO is a statutory body, empowered to recover or enforce Judgments, where possible. The EJO will levy a scale fee depending on the amount of debt. Once again, it is worth bearing in mind that it cannot recover what is not there, and you may wish to consider applying for a Discovery Order as to the debtor's means at the appropriate stage (see below).

The EJO has wide reaching powers, in that they can seize assets belonging to the Debtor, make an Attachment of Earnings Order (whereby part of the Debtor's wages are paid direct to the Enforcement Office) or an Instalment Order, should the debtor own their own business; and/or impose an Order Charging Land on any property owned by the Debtor. This is not an exhaustive list, as other powers exist particularly in relation to securing business assets/stocks/shares and other financial gains received or due to be received by the debtor.

Procedure:-

Notice of Intent to Enforce

We will prepare a Notice of Intent to Enforce, which must be issued and served prior to an Application for Full Enforcement, or Discovery. This is produced by this office, sent to the EJO in duplicate, together with the EJO fee, and served on the debtor by the EJO. The Notice will make a claim for:

- the Judgment sum
- interest thereon at 8%
- any costs awarded by the Court
- and the EJO outlay

No further action may be taken for 10 days from the date of service of the Notice. If there is no response, then the next step is to make an Application for Full Enforcement or an Application for Discovery.

(Please note the Notice itself will be valid for a period of three months only and will lapse if unserved)

Application for Full Enforcement

We will prepare the Application for Full Enforcement/Discovery and will request payment from you, for the EJO Fee, which will depend on the amount of the debt. The initial notice fee and the Application Fee will be added to the total amount to be pursued by the EJO. However, the EJO will only allow £12.00 in respect of our professional fees; the remainder will remain your responsibility.

Details of the EJO Fees and our Professional Fees appear in our fee structure.

Upon receipt of an Application for Full Enforcement/Discovery and the requisite fee, the EJO will request that the debtor attend for interview, to ascertain their current financial status, whether property is owned etc, and produce a "Means Report". If the debtor fails to attend, the EJO can issue a Warrant for Arrest against the debtor. (At this stage, the debtor will appear in "Stubbs Gazette" may well have a negative impact on their ability to continue trading and/or obtain credit).

Depending on the contents of the Means Report, the EJO will, where possible, implement the appropriate measures in an effort to secure payment.

It is important to note, however, that the EJO cannot guarantee recovery, especially if the Debtor has other judgments registered against them in priority to yours, or if they have disposed or indeed dispose of their assets in an attempt to avoid payment.

Please also note, that the use of these powers may take a considerable period of time, and the EJO costs, although recoverable from the Debtor if enforcement is successful, can be substantial. Our own professional fees are not recoverable.

Careful consideration must be given to whether an enforcement application is worthwhile.

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Application for Discovery

Should your debt exceed £3,000, we would recommend an Application for Discovery be lodged against the debtor prior to Full Enforcement Application. This is where the EJO will obtain a "Means Report" on the debtor to ascertain their financial status. The EJO will charge a set fee referred to in our fee structure. The Report should help you to make a more informed decision on whether the debtor is a "good mark" for recovery.

Once you receive the report, you have 10 days in which to decide whether to pursue a Full Enforcement Application. If you choose to pursue Full Enforcement you will maintain your priority above any subsequent applications and the fee already paid, will be deducted from the EJO scale fee. Should you decide not to pursue, you will lose your position.

Orders Explained:

Attachment of Earnings Order:

If the debtor is currently in employment and cannot afford to pay the debt in full, the EJO can attach an Attachment of Earnings Order against their employer. This means that the debtor's employer will be obliged to deduct a sum, specified by the EJO, from the debtor's wages and forward to the EJO, for onward payment to the Creditor.

Installment Order:

If a debtor is self-employed, his income cannot be subject to an Attachment of Earnings Order. The EJO will instead request payment by way of an Installment Order and will specify the date and amount of payment. Should the debtor default for no good reason, the main option, (unless any other Orders can be obtained) is to issue Committal Proceedings (ie seek to have the debtor imprisoned). However this may require separate proceedings which can be expensive.

other Orders can be obtained) is to issue Committal Proceedings (ie seek to have the debtor imprisoned). However this may require separate proceedings which can be expensive.

Seizure Order:

This Order directs the EJO to seize sufficient goods or assets from the debtor to secure payment for the debt. The following goods cannot be seized:

- debtors clothes and household furniture;
- any goods subject to HP Agreements;
- ◆ tools of the trade to the value of £100;
- any goods in the hands of a Receiver which have been appointed by Court.

Order Charging Land:

If a debtor owns property, whether jointly or otherwise, or has an interest in property, we can petition the EJO to issue a Charge on the land, in an effort to secure payment. Only when the Order has been registered against the property and the property sold/remortgaged, will the creditor be paid from the net proceeds of the sale. An Order forcing sale can only be made if there are no other legal equitable interests in the property (eg. Spouse). Please note that the Order Charging Land only survives for a period of 12 years from the date of Judgment. Should the debt not be discharged within this period a fresh Order will not issue.

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Order Appointing Receiver:

Should the debtor receive additional monies from a Third Party (eg. from a personal injury claim or in a remortgage situation), the EJO can serve this Order on the Third Party, thereby making them the Receiver. Once this Order has been served on the Receiver, the Receiver is obliged to forward the net monies, to the EJO, who will forward payment to whichever creditor has priority.

Please note:

The EJO process can be ineffective if it ultimately transpires that the debtor has insufficient means (eg where the debtor is in receipt of benefits) and a Certificate of Unenforceability may result. This is why we recommend that you obtain status checks or make an Application for Discovery, prior to Full Enforcement action.

Please note, in the event that there is more than one judgment being enforced, the EJO will deal with each application in the order in which received by their office. In the event the EJO secures monies from the debtor, these monies will be used to discharge whichever debt has priority.

Billing details for EJO applications are contained in our fee structure. Particulars of the Statutory Scale for Full Enforcement can be provided on request. Additional professional fees are chargeable for dealing with orders and summons issued by the EJO.

Debt Recovery

Insolvency

BANKRUPTCY/WINDING-UP PROCEEDINGS

There are two main types of Insolvency proceedings: those directed against an individual are known as bankruptcy proceedings and those against a Limited Company are known as Winding-Up Proceedings.

The first step in both bankruptcy and winding-up proceedings, is the Statutory Demand. Please note that a Statutory Demand can not be issued if the debt is under £750 or if the matter is disputed.

Procedure:

We will draft the Statutory Demand, giving full details of the debt owed, and arrange to have it served personally on the Debtor. The demand gives the debtor 21 days to pay in full, failing which you are at liberty to instigate formal insolvency proceedings. The Statutory Demand is a useful tool; it is the first step in insolvency proceedings, carries a lot of weight, the threat of Insolvency can be a very effective remedy, particularly with business debts. However, it is not filed in court and there is no obligation on you to proceed to the next step unless you wish to do so. The professional fees and outlay for the Statutory Demand appear in our fee structure.

- **Should the debtor make payment within 21 days** you are entitled to the amount claimed together with interest. Please note that Professional Fees or outlay are not recoverable at this stage.
- **If the debtor disputes the matter** once a Statutory Demand has been issued, an application can be made, within 18 days, to have the Statutory Demand set aside. Therefore proceedings will have to be issued through civil proceedings.

◆ **If the debt remains unpaid at the expiration of the 21 day time limit**, this serves as evidence that the debtor is indeed insolvent. A decision should then be taken as to whether to pursue formal insolvency proceedings. However, a word of warning – to declare a debtor bankrupt or to place a company in liquidation is effectively resigning yourself to the fact that you are unlikely to achieve full recovery. You bankrupt or liquidate a debtor, not just for your own debt, but for all debts owed to all creditors. You take no precedence over other creditors merely because you instigated the proceedings. All creditors rank equally in an insolvency situation, bar the crown creditors such as Inland Revenue who occupy a preferential position.

□ **If the decision is taken to progress with insolvency proceedings**, we will draft a number of documents to be filed in court, including the bankruptcy or winding-up petition. The details in this petition must be verified by you, the client, by way of Affidavit. We will prepare and obtain other documents such as a draft order, search certificates and draft advertisements, which will be filed in court and a date obtained for hearing.

The petition is then served personally on the debtor, and in the case of winding-up proceedings, the petition is advertised in the Belfast Gazette. This will alert other creditors.

The solicitor must attend the appointed court hearing, although there is no requirement that you attend. If all the documentation is in order and all procedural requirements have been complied with, and if no payments or dispute has been raised by the debtor, then the Chancery Master should grant the order. funds available. Even then, you may not receive anything for a significant period of time.



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At this stage, all matters fall within the remit of the Official Receiver's office, which will appoint an Insolvency Practitioner: Trustee in Bankruptcy or a Liquidator, and convene a meeting of creditors. From this point, control of the proceedings passes from the solicitor to the Insolvency Practitioner, and it may be some months before you hear anything further. The Trustee/Liquidator will realise any assets, discharge any fees & if any residue exists, this will be distributed, first to preferential creditors and then to unsecured creditors. Even then, any dividend is not likely to be payable until perhaps two years after the date of the court order.

Insolvency proceedings are costly and although, once the petition has been filed in court, you are entitled to payment of your legal costs, payment can only be made if there are sufficient debtor funds available. Even then, you may not receive anything for a significant period of time.

Ultimately, you are responsible for payment of our fees and outlay, and you seek reimbursement from the Trustee/Liquidator. Serious consideration should be given before taking the decision to proceed with bankruptcy or winding-up. Details of professional fees and outlay appear on our fee structure.

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Court Fees and Interest

Court Fees

- 1 All Outlay, including Court issue expenses are the responsibility of the Client to discharge in advance and the amounts subject to increase from time to time beyond the control of Wilson Nesbitt. We invoice Outlay required as it is to be incurred.
- 2 The Outlay payable from time to time should be remitted to Wilson Nesbitt within seven days of request otherwise delays in recovery action will occur. Alternatively, general retainer payments on account may be lodged with Wilson Nesbitt to ensure an immediate drawdown of Outlay, in each case, so further action will be instantaneous.
- 3 Most Court Outlay expenses are recoverable from the Debtor and will be refunded to the client if recovery is successful.

4 The Client agrees that Wilson Nesbitt may deduct Fees due to Wilson Nesbitt from any funds recovered from a Debtor prior to remission of the balance to the client, unless an alternative agreement has been reached.

Interest

You can claim interest at the statutory rate of 8% per annum from 30 days after the date of invoice/agreement.

If you do not have your own terms of interest you are entitled to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. This is claimed at the rate of 8% above the relevant Bank of England Base Rate. i.e. base rate 4% your interest would be claimed at 12%. Please note if your debtor is an individual you can not claim under this Act. Only Business-Business debts.

Please note: The courts have discretion on interest.

After Judgment, interest will continue at the statutory rate until payment.

Calculation of Interest

$$\frac{\text{Debt} \times \text{Interest Rate} \times \text{Number of days outstanding}}{365}$$

Example:-

Debt of £5,000.00 outstanding for 770 days.

$$5000 \times 8\% \times 770 \div 365 = \mathbf{£843.84}$$

For more information on the Late Payment of Commercial Debts (Interest) Act 1998 visit:

www.payontime.co.uk



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NOTE

- This booklet is not a definitive statement of the law and is not intended to be relied upon as such.
- It is instead, a practical guide on whether a debt should be pursued, how it might be pursued and the rewards and pitfalls along the way.