

### Debt Recovery

**“If I owe you a pound, I have a problem, but if I owe you a million, the problem is yours” -**  
John Maynard Keynes

We have put together this collection of frequently asked questions to help you understand what is typically involved in debt recovery and ultimately help you get your money back. We sincerely hope this is of some use to you.

#### **Why should I use a solicitor for debt recovery?**

Debt recovery agencies have become very commonplace and, in many instances, they use an approach which is not properly tailored to the circumstances and do not take into account your wishes to maintain the pre-existing relationship that you have with the debtor. It is very common for debtors to ignore debt recovery agencies.

Using a solicitor enables you to tailor the approach you take, allowing you to save the relationship between you and the debtor if you want to and ultimately gives you a better chance of getting your money back. Contact from solicitors usually makes the matter appear to be a serious one that requires the attention of the debtor. Wanting to avoid costly litigation and the stress involved, the debtor is more likely to pay back the money.

#### **How does the size of the claim influence claims through courts?**

If the debtor refuses to pay after your solicitor attempts to contact them, the next step may involve taking the case to the county court.

The court has three tracks. For simple cases involving sums up to £5,000, the small claims track will be used. For amounts between £5,000 and £25,000, fast track will be used. For complex disputes and amounts over £25,000, multi-track is used.

#### **I have a small claim. Tell me a little bit more about the procedures involved.**

Small claims are fairly easy to deal with, less formal than full-blown litigation and generally require less preparation. Nonetheless, as a minimum, both parties will be expected to have exchanged witness statements and documents prior to the hearing.

Unlike normal litigation, small claims procedures do not usually award legal costs and evidence is rarely given under oath.

#### **What is a statutory demand?**

A statutory demand gives a debtor 21 days to pay a debt or 18 days to have the demand set aside. If they do not pay within 21 days, a bankruptcy petition can follow, although in the vast majority of cases it does not. For a statutory demand to be made, you do not have to go to court.

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### **Are statutory demands useful?**

Using a statutory demand tends to be a high risk strategy. It is often used to scare debtors into paying. If not used properly and the debtor understands the reasons as to why you are using a statutory demand, it could make getting your money back even more difficult.

### **When should a statutory demand be used?**

Statutory demands can be used against companies and personal debtors alike (friends, family). They are not instruments that can be used to circumnavigate the court, and as such they are technically not a prelude to bankruptcy. Only the court can impose bankruptcy through a bankruptcy order.

If possible, you should be prepared to take the claim to court following the issue of the statutory demand. If you do not follow up, the creditor may ignore any subsequent requests altogether. Should you later decide to take the claim to court, the court will not look kindly on you using statutory demands as a scare tactic. If the amount is below £750, then a statutory demand should not be used as this is the minimum amount required for a bankruptcy order.

### **What tactics can debtors use to thwart statutory demands?**

It really depends on the circumstances, but, in general, there are three possibilities. The debtor may try to reduce the debt below £750 to avoid a bankruptcy order. If the debtor wants to contest the claim and argue that it is unlawful, they might try to have the demand set aside within 18 days. If there is no issue and the debtor accepts the legality of the claim, the debtor may try to settle the debt with the creditor.

It must be remembered that the law is applied equally. If the debtor is seen to be using deliberate tactics to thwart your claim, the court will not look kindly on this which should benefit your claim.

### **Get in touch**

To find out how what Miramar Legal can do to help you get back your money, please speak to Mohit Chopra.

#### **Liability disclaimer**

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