



Getting Your Money Back

Court Claims vs Winding Up Petitions – A Practical Overview

This guide will help you decide which method to use to recover payment from your client's and customers.

Court Claim

This is the most commonly used procedure to recover money. It has a more certain outcome – you get an order from the court saying the money is owed to you at the end of the process. However, if the claim is disputed it can be longwinded and costly.

The claim is started by completing a claim form and particulars of the claim. They can be in the same or separate documents. If the claim is a straightforward money judgment, usually in the same document. As with any claim, always make sure you have the name of the defendant absolutely right before you start incurring costs in any proceedings. If you get it wrong you may have to start again.

If the claim is not disputed you can request judgment after 14 days and you can recover fixed costs. Getting judgment doesn't mean you get paid though and you will have to use one of the many methods of enforcement to try and get your money back. These include:

- Instructing a bailiff (or High Court Enforcement Officer) to attend your customer's premises to seize goods
- Applying for a charging order over any property owned by your customer – this gives you security over the property and – provided the debt has sufficient value – you can commence possession proceedings to repossess and sell that property to get paid
- Applying for a third party debt order against your customer. This involves asking the court for an order that any third parties who owe money to your customer to pay those monies to you instead. This is useful if you know who your customer's suppliers or bankers are
- Applying for an Attachment of Earnings Order which can be used where a customer is an individual and is employed. You can ask the court to make an order that the employer pays money to you out of the employees earnings each week or month
- Commence winding up or bankruptcy proceedings – see below.

When to use the court claim

This procedure should always be used where there is a dispute over the amount claimed. This is because the court procedure is geared to resolving factual disputes by providing for exchange of evidence and by an oral examination of witnesses at a trial.

If the claim is not disputed then it is one of the quickest and cheapest ways to get paid as the court fees are not significant (at least not for lower value claims) and you can ask for a judgment within 14 days. However, you it does leave you open to any old defence being put in by your customer just to buy time and avoid paying up.

Pros

Certainty of final outcome

Low risk where claim disputed

Relatively low cost where claim undisputed

Access to a number of different methods of enforcement

Cons

If a claim is disputed it can take at least 6 months to get a judgment

If disputed, costs can often become disproportionate the amount claimed

Defendants can dispute claims just to buy more time to pay

Statutory Demand

This is a pre-cursor to issuing a bankruptcy or winding up petition but is not always a pre-requisite. The purpose of a statutory demand – if it goes unanswered – is to prove to the court that the customer is insolvent i.e. cannot pay debts as they fall due which entitles you to present a winding up or bankruptcy petition.

In the case of individuals, a statutory demand must be served before you can present a bankruptcy petition. However, for companies it isn't necessary to serve a statutory demand. You can just give short notice, by letter that you intend to commence winding up proceedings if they don't pay up.

However, despite this, the statutory demand itself has become a debt recovery tool in its own right. The mere threat of a bankruptcy or winding up petition being issued is sometimes enough for payment to be made, particularly as in order to avoid a petition being presented the customer would have to either make an application to the court to set aside the statutory demand (bankruptcy) or apply for an injunction preventing presentation of the winding up petition. Both of those steps will incur a court fee and probably solicitors fees.

If you do use a statutory demand, make sure it is served properly. If the customer is local you can do it yourself provided you prepare a witness statement confirming who it was served on, when and where. It must be personally served on the individual or company. Otherwise, best to use a process server which can be done for around £50 plus VAT.

The statutory demand, although it has no certain outcome is a cheap and effective tool. It is a simple form to complete and the only extra cost may be for process server fees. The downside is that if it does not have the desired effect you are back at square one deciding whether to issue a court claim or a petition.

Petitions

This procedure is used when the claim is not disputed – it just has not been paid. It isn't really a debt recovery tool as the purpose of a petition is to ask the court to make someone bankrupt or wind up a company because it should no longer be trading as it is insolvent (can't pay its debts as they fall due).

However, it is often used as a tool in recovering debts due to the fact that the threat it presents is enough incentive for debtors to pay. Notice of it (by way of statutory demand or letter – see above) is often enough of a threat to induce payment.

The form is fairly straightforward to complete once you have already done one but there are other requirements which you need to be aware of:

- For a bankruptcy petition you must serve a statutory demand first and you will need to provide a certificate of service of that statutory demand with your petition
- You must serve the petition at least 21 days before the hearing date fixed by the court
- For a winding up petition you must advertise the petition no sooner than 7 days after issuing and no later than 7 days before the hearing
- You must serve a certificate of compliance 5 days before the hearing.

The key determining factors in using this procedure is cost (it is quite a large initial outlay for the court fee and the official receiver's deposit – though the OR's deposit is refundable if an order isn't made) and risk (if the order is made, you are unlikely to get paid).

Be aware though, if other creditors jump on the back of your petition then it can't be settled unless everyone has been paid – not just you. This is where knowledge of your customer is useful. If they genuinely can't pay then the likelihood is that an order will be made. Otherwise, if they have just been stalling and want to avoid being made bankrupt or wound up they will try and find the money.

To find out how we can help you please contact our specialist:



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