

**COMMERCIAL DEBT  
RECOVERY &  
LITIGATION  
DEPARTMENT**

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## THE DEPARTMENT

Whitemans is one of the longest established law firms in Gloucestershire with offices in the City of Gloucester and the Regency Town of Cheltenham and provides a full range of services to our business clients alongside a private client practice.

Our Commercial Debt Recovery & Litigation Department is headed by Tim Wheeler. Tim, who is an experienced litigator, is a Fellow of the Institute of Legal Executives and a Member of the Institute of Credit Management. Tim is well known in the debt recovery field. Tim is assisted by Helen Beetham, trainee legal executive, Lynn Barden enforcement assistant and by his secretary Deb Larcombe.

Nicholas Alexander has overall responsibility for litigation. Nicholas has over 25 years' experience and ensures that we are able to provide a full range of litigation support to our commercial clients.

We recognise that cash flow is extremely important to all businesses and we use the latest technology to ensure that clients receive the best possible service. Court proceedings are issued instantaneously on-line, and this ensures that there is no delay in the recovery of money due to you. We offer a fixed priced debt recovery service with no hidden costs. In a successful claim we recover court fees and our charges and you retain your debt and interest. With a fixed fee applying in an unsuccessful claim a commercial client is able to assess at the outset the worst-case scenario, namely what it will cost if the debt is not recovered.

The firm's Partners Nicholas Alexander and Andrew Ewart-James are High Court Enforcement Officers and are able to enforce payment of Judgments anywhere in the country. The enforcement work goes hand in hand with debt recovery and we are one of the few firms of solicitors in the Country handling the whole claim, including enforcement, under one roof. The enforcement work is carried out under Mid-West Enforcement. We also have our own in-house enquiry agent company providing such services as the tracing of missing debtors and the serving of court papers.

Our Commercial Debt Recovery & Litigation Department acts for a wide range of commercial organisations, both local and national. Our clients include one of the UK's largest building supplies merchants, a national oil/fuel supply company, a major plant hire company and a national greeting cards supplier. We are happy to put you in touch with any of our clients to confirm the quality of our service.

## **THE SERVICE**

### **Letter Before Action**

Upon receipt of your instructions we immediately forward to the debtor a letter before action, requesting settlement within 7 days. We make it clear to the debtor that if payment is not made then court proceedings will be instigated and if such a step is necessary then, in addition to the debt, we will seek payment of interest, court fees and cost.

### **Issue of Court Proceedings**

If payment is not received in response to the letter before action then court proceedings are issued instantaneously on-line, so there is no delay. In addition to the debt, on business claims we seek interest at the rate of 8% above base rate under the Late Payment of Commercial Debts Regulations 2002, as well as late payment compensation. If the debt is not a business debt then we will claim interest at the rate of 8% under Section 69 of The County Courts Act 1984. As solicitors we are also able to recover costs in addition to court fees.

The court serves the proceedings upon the debtor, who then has 14 days in which to respond. If the debtor fails to respond then Judgment can be entered immediately by default. Judgment is entered instantaneously on-line after the expiry of the 14 days from service.

If the defendant files an Admission to the debt then Judgment will be entered either after acceptance of the repayment proposals or determination by the court.

Upon the issue of proceedings it is necessary for us to sign a statement of truth on your behalf confirming that the debt is due and there is no valid dispute. We will take your instructions to issue proceedings as specific authority for us to sign the statement of truth on your behalf. You can be held in contempt of court for any statements that are not true.

### **Enforcement by way of Bailiff/Sheriff**

Upon receipt of the sealed Judgment from the Court the usual way to enforce payment is by instruction of the Bailiff or Sheriff. For claims under £600 the County Court Bailiff has to be used. For claims over £600 we transfer all claims to the High Court and instruct a High Court Enforcement Officer, who is more effective than the bailiff, to recover the debt.

Our Partners Nicholas Alexander and Andrew Ewart-James are High Court Enforcement Officers so we are able to handle the whole claim including

enforcement. If the debtor is in an area we do not cover then an alternative officer will be instructed from our extensive panel.

### **Defended Actions**

The debtor can file an Acknowledgment of Service to the court proceedings, indicating an intention to defend the matter. In such cases the debtor will have a further 14 days to file a Defence. Upon the filing of a Defence a disputed claim will be allocated either to the Small Track, Fast Track or Multi Track, depending on the size of the debt, and will be dealt with as a defended action. For further information please see pages 11 and 12 in this brochure.

### **Instructing our Commercial Debt Recovery Department**

In straightforward undefended claims you do not need to send us all your paperwork at the outset. The only details we require from you are the debtor's name, address, the amount due, the period of invoices and a brief description of the basis of your claim, i.e. goods supplied.

The easiest and quickest way to send instructions is by way of e-mail. New instructions can be e-mailed to [twheeler@whitemans.com](mailto:twheeler@whitemans.com).

Alternatively, instructions can be sent by way of fax on 01452 300922 or by post at 2<sup>nd</sup> Floor, 65 London Road, Gloucester, GL1 3HF.

### **Expert Advice and Service**

Your claim will be under the direct control of Tim Wheeler. It is our aim to provide a highly efficient service. The latest technology is an important tool in debt recovery, although we recognise the importance of face-to-face meetings. Tim can meet with your Credit Manager on a regular basis to ensure that you are receiving a first class service.

### **Accounting and Reporting**

We would normally invoice you for disbursements paid, monthly in arrears, and account to you on a monthly basis for money recovered, deducting our appropriate charges. Accounting can, however, be adapted to your needs.

You will be kept informed as your cases progress and we can also provide periodical reports.

## FEES AND COSTS

### Standard Letter before Action Charge

We make a standard charge for the receipt of your instructions and the sending of a letter before action, depending on the size of the debt. The standard charge is as follows: -

<u>Debt Amount</u>	<u>Standard Charge</u>
Up to £1,000	£10 plus VAT
£1,000 to £2,000	£15 plus VAT
£2,000 to £5,000	£25 plus VAT
Above £5,000	£50 plus VAT

For regular instructions (10 or more instructions per month) we can agree a reduced charge per debt.

Alternatively, we are happy to agree a monthly retainer to cover an unlimited number of letter before action instructions and to cover general telephone advice given throughout the month to your Credit Manager.

### Court Proceedings

If court action is necessary then the following court fees and our charges will apply. The court fees and our charges will be recoverable from the debtor and therefore in a successful court action you will pay nothing. VAT is applicable on our charges although you will be able to reclaim back the VAT provided you are VAT registered. There are no hidden charges. If the debt is not recovered, for example, the debtor disappears or becomes insolvent, then you pay the court fees applicable and our charges as set out below. You are able to assess at the outset what a case will cost you if there is not a successful recovery.

### Court Fees

<u>Debt Amount</u>	<u>Court Issue Fee</u>	<u>Bailiff/Enforcement Officer Fee*</u>
£25.00 to £125.00	£30	£35
£125.01 to £300	£30	£55
£300.01 to £500	£50	£55
£500.01 to £600	£80	£55
£600.01 to £1,000	£80	£50
£1,000.01 to £5,000	£120	£50
£5,000.01 to £15,000	£250	£50
£15,000.01 to £50,000	£400	£50

\* Enforcement Officer is instructed on all claims over £600 and an abortive fee of £60 plus VAT is payable if debt is not recovered.

## Our Charges

As solicitors we are able to recover costs from the debtor and we also claim on your behalf compensation under the Late Payment of Commercial Debts Regulations 2002. In a successful action we will retain the costs and compensation recovered from the debtor to cover our charges. VAT will be applicable, although you will be able to claim back the VAT if you are VAT registered. Therefore, in a successful action you will receive IN FULL the debt and Late Payment Interest at the rate of 8% above the base rate (on business debts - 8% interest if a non-business debt).

Amount of debt	Compensation	Claim Form	On entering Judgment in default (following an admission)	On enforcement by sheriff or bailiff
£25.00 - £500.00	£40.00	£50.00	£22.00 (£40.00)	£2.25
£500.01 - £600	£40.00	£70.00	£22.00 (£40.00)	£2.25
£600.01 - £1000.00	£40.00	£70.00	£22.00 (£40.00)	£51.75
£1000.01 - £5000.00	£70.00	£80.00	£22.00 (£40.00)	£51.75
£5000.01 - £10,000.00	£70.00	£100.00	£30.00 (£40.00)	£51.75
£10,000.01 - over	£100.00	£100.00	£30.00 (£40.00)	£51.75

In an unsuccessful action then our charges will be limited to the sum that would have been recoverable from the debtor as per the table above, depending on the stage reached. VAT will be payable upon this fee, although will be recoverable if you are VAT registered.

## **ENFORCEMENT OF JUDGMENT**

### **Writ of Fieri Facias/Warrant of Execution**

The usual method of enforcement of a Judgment is by way of Writ of Fieri Facias in the High Court or Warrant of Execution in the County Court. This is the method of enforcement that is used initially in a debt recovery claim and forms part of our fixed price service. If the claim is below £600 the County Court Bailiff is instructed. If the claim is over £600 then the High Court Enforcement Officer is used. The Bailiff and Enforcement Officer will seize goods belonging to the debtor to satisfy the Judgment.

Any goods seized are sold at auction and the proceeds paid to the creditor after deduction of the Bailiff/Enforcement Officer's fees and expenses. It will be helpful if you can provide any information as to specific goods that could be seized, for example, the debtor's vehicle. Clothing, bedding and the debtor's tools of trade are protected and cannot be seized.

It is usual for the Enforcement Officer/Bailiff to enter into walking possession and to place a levy over the goods. The debtor is not able to dispose of the assets, and if he did so he would be in contempt of court. If the debtor fails to pay then the goods are seized and sold.

Our Partners Nicholas Alexander and Andrew Ewart-James are High Court Enforcement Officers so we are able to handle the whole claim including enforcement.

### **Charging Order**

If the debtor owns or has an interest in a property then we are able to apply for a Charge to be placed over the property. The Charging Order is registered at the Land Registry to protect the creditor's interest. Once the Charge has been secured then if the debtor fails to pay what is due the creditor can apply to the Court for an Order for Sale of the property. The debt would then be paid out of the proceeds of sale.

### **Attachment of Earnings Order**

If the debtor is employed then the Court can order the debtor's employer to deduct a sum from the debtor's wages. An Attachment of Earnings Order can only be granted if the Defendant is employed. It would not be appropriate if the debtor were self-employed.

### **Third Party Proceedings**

If the debtor is owed money by a third party then it is possible to obtain an Order of the Court requiring that other party do pay the money that is due to

the debtor to you to satisfy your Judgment. This is commonly used where the debtor has a bank account. The Third Party Order freezes the funds in the bank account up to the value of the Judgment. This application is only appropriate if the debtor's bank account is in credit, and could not be applied to an overdraft.

### **Oral Examination**

The debtor can be brought before the Court to be questioned about his/her means. The debtor completes a sworn deposition and we will then be able to advise you of the best way of enforcing payment. The debtor may pay to avoid the Court attendance, and quite often at the Oral Examination hearing the debtor puts forward proposals as to settlement. In the case of a limited company the director is questioned about the company's assets.

### **Appointment of Receiver**

This is a very rare enforcement step, and expensive. An independent receiver can be appointed to take payment from, for example, income under a Trust Fund.

### **Insolvency Proceedings**

In cases where you are owed more than £750 you can institute Insolvency Proceedings against the debtor. Winding Up Proceedings are issued in the case of a limited company and Bankruptcy Proceedings in the case of an individual debtor. Such proceedings can be threatened by way of service of a Statutory Demand under the Insolvency Act 1986, and the threat of Winding Up/Bankruptcy Proceedings can often produce payment or proposals as to settlement.

Upon the making of a Bankruptcy/Winding Up Order the Trustee in the case of Bankruptcy, and the Liquidator in the case of Winding Up, will realise the debtor's assets and divide these between the unsecured creditors, after the deduction of his fees.

### **Costs**

Enforcement by way of Writ of Fieri Facis and Warrant of Execution are included in our standard debt recovery service and covered by our fixed charges. We are happy to give an estimate of the fees and costs that will be involved in taking any of the other enforcement steps.

## **SUPPORT SERVICES**

### **Credit Control**

Draft/review your credit application form and review pre-credit reports and references.

### **Terms and Conditions of Trading**

We are able to review/draft your terms and conditions of trading.

### **Creditors' Meetings**

We can arrange for a licensed insolvency practitioner to represent you at creditors' meetings. The insolvency practitioner will provide a written report to us, usually free of charge.

### **Pre-Legal Collection**

We are able to offer pre-legal collection services, often on a 'no collection, no fee' basis.

### **Enquiry Agents/Process Servers**

We have our own in-house enquiry agent company and are able to trace missing debtors on a 'no trace, no fee' basis. The fee for a successful trace is £45 plus VAT. We are also able to arrange for the service of legal papers anywhere in the Country.

### **Statutory Demand**

A Statutory Demand is issued under the Insolvency Act 1986 and is often used to good effect in debt recovery claims. The Statutory Demand has to be served personally and this can be carried out by our in-house process servers. The Statutory Demand gives the debtor 21 days to pay or respond to the Demand. Failing response, you can petition for an individual's Bankruptcy or for a limited company to be Wound Up.

The service of the Statutory Demand often results in payment or, at least, proposals as to payment, without the need to issue a petition.

### **Defended Actions**

Our commercial litigation lawyers are able to deal with defended actions.

## DEFENDED ACTIONS

### The Tracks

If your claim is defended then upon the filing of the Defence it will be allocated to one of three tracks: -

- Small Claim Track - Claims up to £5,000
- Fast Track - Claims between £5,000 and £15,000
- Multi Track - Claims over £15,000

### **Allocation Questionnaires**

Upon the filing of a Defence we will need to complete an Allocation Questionnaire on your behalf, giving details of witnesses, unavailable dates for trial, proposed directions and indicating the track to which the claim should be allocated.

### **Small Claims Track**

This is for claims less than £5,000. The hearings are informal and take place in open court before a District Judge. There are no strict rules of evidence. The District Judge will take control of the hearing and will hear both sides before making a decision. In certain circumstances the District Judge can decide the case on papers alone.

It is usual for the court, upon allocation to the Small Track, to give directions for the parties to deliver to the court and the other side all relevant documents and, in certain circumstances, witness statements. This usually has to be done 14 days before the court hearing.

Solicitors' costs are not normally recoverable on Small Track hearings and it is not usually economical for you to instruct a solicitor to attend with you. We usually assist with the paperwork and give advice beforehand. It is best for you to arrange for your representative(s), who can give first hand evidence in support of your claim, to attend and deal with the hearing.

If a case is particularly difficult or a point of law is involved then we are happy to represent you at the hearing. Your representative(s) will still have to attend to give the evidence.

## **Fast Track**

This is for claims over £5,000 and less than £15,000. Upon allocation to the Fast Track the court will give directions and a timetable for the matter to proceed through to a Trial. It is usual for the Trial to take place within 6 months of the Defence being filed.

The usual directions include:

- Disclosure of Documents
- Inspection of Documents
- Exchange of Witness Statements
- Exchange of any Experts' Reports
- Filing of Listing Questionnaire
- Trial Date

Legal costs can be recovered in Fast Track Claims and it is usual for the loser to pay the winner's costs. However, costs need to be proportionate, taking into account the value and complexity of the claim. If costs are disproportionate then some of the costs may be disallowed.

## **Multi Track**

Claims over £15,000 are allocated to the Multi Track. The court will in Multi Track cases usually call a Case Management Conference where the parties will attend and directions will be given, taking into account the requirements of individual cases. The court will need to ensure that the issues are identified and the directions deal with the evidence that needs to be produced.

It is usual for directions similar to those in Fast Track to be given, and the Trial in a standard Multi Track claim should take place within a period of 6 and 12 months from the filing of the Defence.

Legal costs can be recovered in Multi Track Claims and it is usual for the loser to pay the winner's costs. However, costs need to be proportionate, taking into account the value and complexity of the claim. If costs are disproportionate then some of the costs may be disallowed.

## **Costs**

Upon the filing of a Defence and allocation to track we can give an estimate of the likely fees and costs that will be involved in progressing your claim through to final Trial. It should be noted that very few defended claims end up at Trial and it is normal for the parties to reach agreement prior to Trial either through negotiation or, in some cases, by way of mediation/alternative dispute resolution.

## **MEDIATION/ALTERNATIVE DISPUTE RESOLUTION WHEN ACTION DEFENDED**

Mediation can give the parties to a dispute the opportunity to reach settlement without a court hearing.

You can resolve your dispute with the help of an independent third party/mediator.

The mediator's job is not to make a decision. Instead the mediator will help the parties to explore the strengths and weaknesses of their cases and to identify possible solutions.

The agreement to try mediation does not stop you from being able to continue with court proceedings if mediation is not successful.

Mediation is less formal than Trial by Judge, is confidential and usually quicker and may reduce the build up of costs.

The main disadvantage of mediation is that there is no guarantee you will reach a solution, and this could mean increased costs.

Mediation can be used to resolve all kinds of disputes. If parties refuse an offer to mediate without good reason then even if they win the case the Judge can refuse to award some or all their legal costs.

If you choose to mediate then we are able to advise you and arrange for a qualified mediator to be instructed. Normally the parties pay a fee to the mediator, depending on the value of the dispute.