



**twm**

**solicitors**

# TWM SOLICITORS

## A GUIDE TO

# DEBT RECOVERY

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### **Initial Instructions**

If you would like TWM Solicitors to act on your behalf in relation to a Debt Recovery matter whether as an individual or as a business, please send your instructions to Samantha Marsden by either email, fax or post to the Guildford office. Full details can be found on our website.

If you have not instructed TWM previously, you will be provided with our full Terms and Conditions, a Summary of Work, Fee Estimate and Acceptance Form. We will ask that you sign and return the Acceptance Form as soon as possible. We will also request you attend one of our offices with your ID documents to comply with Money Laundering Regulations.

In order to comply with the Pre-Action Protocol for Debt Claims (as detailed on our website), please include with your instructions:

- Full name and contact details for the Debtor;
- A copy of all the outstanding invoices and any supporting documentation (purchase orders, emails etc);
- Details of any interest charged and accruing and any other administrative fees applied to the account;
- Full and up to date Statement of Account including interest and other fees;
- A copy of any written agreement upon which the debt is based. Or in the alternative, a copy of correspondence confirming terms of the agreement;
- If the debt is based on an oral agreement, details of what was agreed, when and where;
- If you are receiving regular instalments, details of why this arrangement is now rejected;
- Any other relevant documents which may be requested by the Debtor or provides further information on how the debt arose.

### **Letter of Claim**

Once we receive your instructions and the above information, we will endeavour to prepare and send the Letter of Claim within 2-3 days. The Letter of Claim will be sent by post and also by email (if you have provided an email address).

If you are a business (**including** Sole Traders and Partnerships) seeking to recover a debt from another business (**excluding** Sole Traders and Partnerships), or an individual owed a debt by another individual, the Letter of Claim will request full settlement of the debt, or payment proposals, within 14 days from the date of the

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letter. If no response is received by this deadline, Court Proceedings may be issued and we will seek your further instructions.

If you are a business (**including** Sole Trader and Partnership) seeking recovery of a debt from an individual (**including** Sole Trader and Partnership), the Letter of Claim will set out full details of the debt and include an Information Sheet, Reply Form and Financial Statement Form (in accordance with the Pre-Action Protocol for Debt Claims) and the Debtor will have 30 days from the date of the Letter of Claim to respond. If no response is received after 30 days, Court Proceedings may be issued and we will seek your further instructions.

If the Debtor responds to the Letter of Claim, Court Proceedings may not be issued within 30 days of receipt or within 30 days of providing to the Debtor any requested documentation or information, whichever is the later.

If the Debtor offers payment proposals or requests time to pay, you must engage with the Debtor, via ourselves, to attempt to negotiate and agree a payment plan. If the Debtor requires time to seek financial advice, a reasonable period should be provided, usually 30 days, unless additional time is requested by the Debtor.

If the debt is disputed, a full and detailed response should be sent to the Debtor within 30 days of receipt. Both parties must attempt to resolve the dispute and consideration should be given to Alternative Dispute Resolution (ADR), including negotiations and mediation (if proportionate to the debt).

If a solution to the dispute cannot be achieved and Court Proceedings are unavoidable, a further 14 day notice must be sent prior to issuing the County Court Claim.

### **Court Proceedings – County Court Claim**

If the debt remains unpaid or a dispute cannot be resolved, we will seek your instructions to issue Court Proceedings by way of a County Court Claim.

Upon your instructions, we will prepare the Claim Form and Particulars of Claim and post this to the Court together with supporting documentation and the relevant Court fee.

The Court will “issue” the Claim by sealing the Claim Form and arranging service on the Debtor by post together with a “Response Pack”. This Court process usually takes approximately 3-4 weeks from date of receipt of the Claim Form to serving on the Debtor and sending a Notice of Issue to ourselves.

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The Debtor, now referred to as the Defendant, will have 14 days from the date of service of the Claim Form and Particulars of Claim to file and serve a response.

### **Acknowledgment of Service**

Upon receipt of the Claim Form, the Defendant may file an Acknowledgment of Service and indicate their intention to file a Defence.

The Acknowledgment of Service extends the Deadline to file a full response to the Claim from 14 days from the date of service to 28 days.

### **Defence and Counterclaim**

If the Defendant disputes the debt, it is likely they will file and serve a Defence to the Claim. A Defence may also include a Counterclaim for damages or other sums the Defendant may believe are due from you.

The process following this point and the associated costs will vary and is very much dependant on the value of the Claim / Counterclaim and the nature of the dispute. We will provide you with full details of the best course of action and an estimate of our fees and will await your instructions.

### **Full Admission of the Debt**

If the Defendant acknowledges the full debt is payable, they may either contact you or our TWM directly to discuss payment options. In the alternative, they may file and serve an Admission of the Debt providing details of their income and expenditure and offer payment proposals.

Judgment on Admission is then requested from the Court either accepting the Defendant's payment proposals, in which case Judgment (CCJ) is entered recording the agreement payment plan, or reject the proposals whereby a Judge will decide the rate of payment and provide the CCJ accordingly.

### **Partial Admission of the Debt**

The Defendant may file and serve a partial Admission of the debt, citing a dispute with the balance. As with a full Admission, the Defendant may offer payment proposals to pay the admitted sum.

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At this point you have 2 options. The first is to accept the partial Admission as full and final settlement of your Claim, accepting or rejecting any payment proposals as above. Judgment (CCJ) will be entered for the admitted sum recording the rate of payment as agreed or decided by the Judge.

Your second option is to reject the partial Admission. At this point the matter will be treated as a full Defended action – see “Defence and Counterclaim” above.

### **County Court Judgment in Default (CCJ)**

If the Defendant fails to respond to the Claim Form and Particulars of Claim, Judgment in Default (CCJ) will be requested shortly after the 14 (or 28) day deadline. The Court will normally take 2-3 weeks to issue and serve the Judgment, a copy of which will be sent to ourselves.

Upon receipt of the Judgment, a further letter will be sent to the Defendant requesting full settlement or payment proposals within 7 days to avoid Enforcement Proceedings.

### **Enforcement of the County Court Judgment**

Following Judgment, if the Defendant again fails to settle the Debt, you may wish to consider commencing Enforcement Proceedings which include:

- \* County Court Bailiffs
- \* High Court Enforcement Officers
- \* Charging Order
- \* Third Party Debt Order
- \* Attachment of Earnings
- \* Statutory Demand for Insolvency
- \* Order for Questioning

Full details of the above Enforcement actions are provided in our “Guide to Enforcement”.

### **Application to Set Aside Judgment**

If Judgment in default has been obtained but the Defendant believes they have a valid dispute, they may apply to the Court to set aside (cancel) the Judgment Order. Upon receipt of the Defendant’s application, the Court will allocate a date for a Hearing at which both Parties are required to attend.

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If the application is unsuccessful, the Judgment (CCJ) will remain due and owing by the Defendant.

If the application is successful, the matter will be treated as a Defended action – see “Defence and Counterclaim” above.

If an application to set aside Judgment is made, we will provide you with full details of the process and an estimate of our fees.

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