

How To Get Paid

It's a familiar scenario. You've done the work, issued an invoice and several reminders and have still not been paid. What can you do next? It is often worthwhile sending one final letter clearly stating the amount of money owed and demanding payment within 7 days failing which legal proceedings will be commenced. Often this threat of litigation is enough to prompt payment, particularly if the letter is sent by a firm of solicitors. If the debt is more than 30 days' overdue, you will also be entitled to interest and statutory compensation (between £40 and £100 depending on the size of the debt) for each overdue invoice. The interest calculator at <https://payontime.co.uk> can help calculate the total amount of your claim.

Alternatively, you can send a formal demand which, if ignored, can be treated as evidence that the debtor is insolvent. There are two types. A Statutory Demand is a notice in a prescribed form (served by Sheriff Officers) demanding payment within 21 days. If payment is not made within 21 days (and unless there is a genuine dispute over whether the sum is due) the expired Statutory Demand can be used to raise insolvency proceedings against the debtor - e.g. a bankruptcy petition if the debtor is an individual or liquidation petition if they are a company.

A winding up letter is a shortened procedure for demanding payment of undisputed debts from a company within 48 hours. If payment is not made, you are entitled to apply to the court to appoint a liquidator to the company. This is extremely damaging to a company's reputation and credit rating and so service of a winding-up letter usually provokes a quick response.

If none of these steps are effective, the other option would be to raise a court action. Ordinarily the size of the debt dictates the type of court action. Claims up to £3,000 can be raised as a Small Claims action. A Small Claim is a quick, informal and relatively cheap type of court procedure designed for parties to do themselves without the need for a lawyer.

A Small Claim is started by completing a Summons and sending it to court with a fee of £65 (£15 if the debt is less than £200). The Summons is then served on the debtor and they must tell the court if they intend to defend the claim. If the claim is undefended the court grants a Decree (i.e. Judgment) straight away. If the claim is defended, an initial hearing takes place at which the court will listen to the defence and try to resolve the dispute there and then. If that is not possible, the court will fix a full hearing with witnesses known as a Proof. A feature of the Small Claims procedure is that there is a limit to the legal expenses you can recover from the debtor if you are successful. The amount recoverable depends on the value of the claim, subject to a maximum of £300. If a Proof is required, it is often more economic to deal with it yourself, as lawyers' fees will almost certainly exceed that amount. Court forms and good guidance notes can be obtained from the Scotcourts website at www.scotcourts.gov.uk

Claims between £3,000 and £5,000 can be raised as a Summary Cause action. Summary Cause procedure is similar to Small Claims in that it is relatively informal, but if you are a limited company you will need to use a lawyer if the claim progresses beyond the initial hearing. Claims over £5,000 are raised as an Ordinary action in

the sheriff court. Companies and other organisations must be represented by a lawyer to bring such a claim. Individuals do not need to use a lawyer - but would be well advised to consult one, as the procedures are less user-friendly than in Small Claims/Summary Cause and you will be expected to adhere to them.

If you are successful in an Ordinary action you can generally expect to recover a proportion of your actual legal costs from the debtor. There will normally be an element of unrecoverable costs. You may have legal expense insurance in place which could cover the claim you are making and it is worthwhile checking all insurance policies or consulting your broker when contemplating litigation.

It is often a case of he who shouts loudest gets paid, so brush off your debt books and start shouting!

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