

Debt Recovery Factsheet

BRODIES' DEBT RECOVERY SERVICE

Brodies' dedicated Debt Recovery Team has recovered millions of pounds of commercial and consumer debt for clients. We pride ourselves in our personal approach and in getting results for our clients.

With offices in Glasgow and Edinburgh, we offer a comprehensive and dedicated service tailored to our clients' needs including registration of English and foreign Judgements, repossessions, Retention of Title and Protective Measures as security for payment. We also give specialist advice on Bankruptcy and Corporate Insolvency. We can assist with recovery of sums owed by foreign debtors.

Our highly experienced team use the latest technology to ensure that our clients maximise recoveries.

YOUR QUESTIONS ANSWERED

1 What do I need to do to start a court action?

Not a lot. Just give us the full name and address of your debtor, the sum claimed, the nature of goods or services, dates of supply, invoices and statement of account. However, the more you can tell us about your debtor the better. If you would like us to proceed with action on your behalf, simply e-mail or fax the relevant details to us .

2 Will court action be expensive?

No. In undefended cases we work to a scale of charges linked to how much you are suing for and to recoverable court costs. Where costs are recovered these are likely to cover a reasonable proportion, but not all, of the fees incurred by you. We must however ask you to pay for irrecoverable outlays e.g. investigators' and local agents' fees and fees for additional work beyond any court action.

In defended cases, our fees will be charged in accordance with standard hourly rates for the personnel involved. We will provide full details immediately any case does become defended.

3 How long will it take?

When we recommend a particular course of action we also indicate a likely timescale. We recognise the need for debt recovery to be as quick as possible.

Our expertise in this area, coupled with the case management software used, allows us to act quickly and efficiently on your behalf and at competitive rates. We are however often tied to dates given by the Court.

4 Where will the action take place?

The vast majority of debt recovery proceedings are brought in the Sheriff Court. There are Sheriff Courts in most major towns and cities in Scotland and we can raise proceedings in any of them. Whichever Sheriff Court has jurisdiction will depend upon the location of your debtor and your own place of business.

5 What if my debtor is in England or abroad and I am in Scotland?

Provided yours is a commercial debt due to be paid in Scotland by a debtor based in the UK, we can still raise proceedings in Scotland. This is likely to be cheaper and less troublesome for you. Otherwise, we have a network of contacts in the rest of the UK, Europe and elsewhere which we can call upon to assist. Most Commonwealth countries will recognise and allow enforcement of a decree of the Court of Session, Scotland's Superior Court.

6 What are the chances of recovering the money owed to me?

The more quickly you pass your debt to us, the better your chances of recovery. We recover the majority of debts we are asked to pursue. The older the debt, the less the chances of recovery. However, we can pursue debts up to five years old in Scotland, so it is always worth talking to us about your outstanding debts, even the oldest ones.

7 What are "diligence" and "diligence on the dependence"?

"Diligence" is simply another name for enforcement of a Decree (Judgement). "Diligence on the Dependence" means diligence prior to Decree. Arrestments (excluding wages), Attachment and Inhibition (see questions 9, 11, 12 and 13) can all be attempted at the outset of, or at any time during, a court action. One of the major advantages of the Scottish Legal System is the availability of Arrestments, Attachment and Inhibition as protective measures which may secure the debtor's assets for the duration of any court action.

Please note that these protective measures i.e. diligence upon the dependence, require leave of the court. For that, there requires to be (i) a prima facie debt, (ii) a risk that any decree obtained may be defeated by the debtor's insolvency, or concealment or destruction of assets, and (iii) that it is reasonable in all the circumstances for the court to allow use of such protective measures .

8 What is a "Charge"?

A "Charge" is the formal intimation to a debtor of the fact that a Decree (Judgement) has passed against them. It is a prerequisite to most steps of enforcement. It does not attach assets. Normally the debtor will have 14 days after service of a Charge to make payment. If they don't pay within that time, we will recommend the best course of action for further enforcement.

9 What is an "Arrestment"?

"Arrestment" is a method of enforcement whereby assets, usually money, owed or belonging to the debtor and in the hands of a third party, are frozen in the hands of that third party. Arrestment (except of earnings) may be possible prior to Decree – known as "arrestment upon the dependence" (see question 7).

10 Can earnings be attached?

Yes, but only after Decree has been obtained. The process is known as "Arrestment of Earnings". A fixed proportion of the debtor's earnings is deducted by their employers and remitted to the creditor on a weekly or monthly basis.

11 What are (a) "Attachment" and (b) "Exceptional Attachment"?

"Attachment" is the inventorying of the assets of a debtor, whether a business or an individual, with a view to these being sold in satisfaction of the debt. Inventorying of assets within a debtor's home is only permitted with leave of the court and as a last resort. This is known as "Exceptional Attachment".

12 Can money be attached?

Money, including cash, foreign currency, cheques and banking instruments, can be attached. This is normally only permitted between the hours of 8.00am and 8.00pm and not on Sundays or public holidays. With leave of the court money can be attached outwith these permitted times.

13 What are "Letters of Inhibition"?

"Letters of Inhibition" are a personal prohibition against a debtor preventing them from voluntarily disposing of, or granting security over, any land or buildings owned by them. Unlike the English Charging Order, it can affect all property in Scotland in which the debtor has an interest and not simply a single property.

14 What is "Compensation for Late Payment"?

Provided yours is a commercial debt, compensation can be claimed for each and every overdue invoice: £40,00 for invoices up to £1000; £70.00 for invoices between £1000 and £10,000; and £100.00 for invoices over £10,000

We will seek recovery of compensation on your behalf.

15 What are "Statutory Demands"?

"Statutory Demands" are formal documents served upon both individuals and limited companies requiring payment within 21 days failing which bankruptcy or liquidation proceedings may follow as appropriate. In certain instances it is possible to shorten the demand against a limited company to only 3 or 4 days. Where appropriate, this can be a very effective remedy.

16 Are insolvency procedures available to creditors?

Yes. Bankruptcy proceedings (also known as sequestration) against individuals or partnerships, and liquidation proceedings against companies can be a very effective means of debt recovery. Technically they are more demanding than traditional methods of enforcement.

17 What is a "Debt Payment Programme"?

An individual with multiple debts, provided they obtain advice from a Money Adviser, may register a scheme to allow repayment by instalments to all their creditors. This is known as a Debt Payment Programme. Whilst it is in existence, creditors cannot generally continue with enforcement nor commence bankruptcy proceedings.

FLOW-CHART IN UNDEFENDED PROCEEDINGS

