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L.E. LAW INFORMATION SHEET NO. 5

GUIDE TO DEBT COLLECTION **(version 3, May 2021)**

This guide is intended to give some pointers to creditors about matters to bear in mind when considering whether and how to pursue recovery of a debt.

1. Preliminary Considerations

- Is there likely to be a dispute about the amount of the debt?
It is relatively easy to send a letter of claim, and then to start a court action. However if the action is defended, it can become protracted and expensive to see through to a final hearing when the court decides whether and how much is owed.
- Has the debtor got means to pay?
If unsure, it may be worth investigating the debtor's means by way of a credit reference agency and/or enquiry agents. Avoid throwing good money after bad.
- We can instruct an enquiry agent for a minimal admin fee (they will also levy their own fee, if the trace is successful). They can often find a debtor, whether here or abroad, with just a name and date of birth.
- Does the debtor have assets in the UK?
If based abroad it may be difficult to enforce a UK judgement through the foreign Courts.

2. Court Proceedings or Statutory Demand?

- A Statutory Demand is quicker and cheaper to serve (there are no Court fees) but if there is a genuine dispute we will need to issue Court proceedings anyway to get a Court decision on whether the debt is owed or not.

- A Statutory Demand is a preliminary step to insolvency proceedings (bankruptcy proceedings for an individual, winding up proceedings for a company). This involves high Court fees and if an Order is made for a liquidator or receiver to be appointed the matter is thereafter outside of your control. Insolvency proceedings tend to take at least a year or two, and usually result in little if any recovery for unsecured creditors.
- Nevertheless if the Debtor is solvent he will probably be very anxious to avoid an Order. If insolvent he may not care (or may be in no position to avoid such an Order). It is sometimes worth threatening insolvency proceedings (including serving a Statutory Demand) but seldom worthwhile following up by actually issuing insolvency proceedings.
- A Statutory Demand is a high risk strategy and as soon as it becomes clear the debtor has a reasonable chance of setting it aside (because there is a genuine argument over the debt) we will usually advise that you withdraw the Statutory Demand and start court proceedings instead.

3. **Court Proceedings**

- A debt action will usually be commenced using the Money Claims Online procedure. If the claim is defended, the action will be transferred to a convenient county court (usually the one local to the debtor).
- If the debtor does not defend, the Claimant may enter judgment and proceed quickly to enforcement.
- County Court judgments worth £5000 or more will attract 8% interest until repaid (a lot more than you will get at your bank!!) and some clients prefer to delay enforcing their judgments for this reason.
- If the debtor does defend then a number of points must be considered:
 - Is the Defence arguable? If not, we will usually apply for summary judgment (a way of seeking early judgment without a full trial).
 - If it is arguable the case follows the usual steps to trial (see our Guide to Litigation).
 - If the debt is less than £10,000 remember the usual rule is no costs can be recovered apart from court fees. Is the debt still economic to pursue? Solicitors charges will almost certainly not be payable by the debtor, apart from the charges for preparing the initial court claim.
- In small claims cases, we offer a fixed fee package to cover drafting the claim or defence, and then giving telephone or email support to guide you through the court procedures.

5. **Interest on debts**

We would strongly recommend that your terms of business set out clearly when payment of invoices is due and that interest at a specified rate will be added in the event of late payment. It is then a matter for you whether you insist on payment of interest or not in each individual case.

Please note that if a debt is paid late, it is still possible to bring proceedings for contractual interest only if you so wish.

If your terms of business do not specify a rate of interest on late payment, you may still be able to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. This can be relied on by any business with 50 or fewer employees. The rate presently applicable is 8.00% above Bank of England base rate.

Please let us know if you would like us to review your terms of business and redraft them where appropriate. We will usually provide this service for a fixed fee.

7. How to instruct us

We accept instructions by telephone, e-mail, letter or fax. To send a 7-day letter, all we need to know are the following details:-

- The debtor's name and correspondence address
- The amount of the debt
- Whether you wish us to claim interest, and if so whether contractual or under the 1998 Act

Please ask for our pro forma instruction sheet, which you can use if you wish.

In order to issue proceedings, we will also need the following:-

- Copies of the invoices and any relevant correspondence
- Payment of the relevant court fee

7. Keeping you informed

We will report to you regularly on all current matters, and more often when necessary in any particular case. Our regular report can be delivered by letter, fax or e-mail, as you prefer.

8. Disclaimer

This information sheet is for guidance only and does not avoid the need to take professional legal advice relevant to the specific facts of any individual case. No responsibility will be accepted for any losses occasioned as a result of any action taken in reliance on the contents of this document.

Contact Details

For further help please contact:-

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