

## **DEBT COLLECTION AND MONEY CLAIMS**

Debt Collection refers to claims for definite sums of money where there are no serious grounds for disputing the claim. Typically, a debt collection claim will be for monies due for goods or services provided.

There are special speedier procedures for obtaining a Court order in “Debt Collection” cases. If, as is very often the case, the claim is not defended, it is usually possible obtain a court order, through the court offices, without a formal court hearing. Once a court order is obtained, it can be enforced in England through various means. It can also be enforced in Ireland, provided that certain procedures are followed.

Legal Proceedings are started by way of a completed “claim form”. The claim form will set out the full claim or alternatively will set out brief particulars of the claim. In this latter case, where brief particulars only are set out, the claim form must be followed by a further more detailed claim within 14 days.

### **Procedure**

The claim form is prepared by the claimant's solicitor and sent to the Court Offices which formally issue it as a legal document. The Court office itself usually serves the documents on the respondent/defendant by first class post. A person making a claim or a person who is the defendant must give an address for services within England and Wales. Lavelle Coleman has an office with an English and Wales address for the purpose of service under the Court rules.

When a defendant receives a claim he must respond in order to avoid a judgement and order being made against him by default. Generally, the defendant must answer the claim by either acknowledging receipt setting out a full defence or admitting the claim in part or in full within certain time limits. If the defendant simply acknowledges a receipt

he must within 28 days of the original claim set out details of his defence. The defence sets out the facts and circumstances by which the defendant claims that the claim is denied in full or in part or is not valid.

### **Defendant Does Not Respond**

It will frequently be the case, particularly in debt collection, that the defendant will have no valid defence to the claim. Where a claim has been made and the defendant has neither acknowledged receipt or filed a defence within the relevant time limit, it is possible to obtain a Court Order through the Court office without a formal hearing or procedure.

Where the judgement is for a specified/certain amount a Court will normally give judgement for the amount due. Where the amount claimed is unspecified, but must be judged and determined by the Court in a disposal hearing before a Court Officer or the judge who will determine the necessary amount of the claim.

There are procedures whereby a defendant can later apply to Court to have the default judgement set aside. It will be necessary to show that there were actual grounds for disputing the claim.

Interest is due on awards either under the original contract or at a special rate fixed on court orders and in the case of commercial debts, under the Late Payment of Debts Acts.

### **Defendant Responds**

It is possible for a defendant to admit part of a claim and dispute the rest. When the claim is submitted the defendant must give personal details and should he make an offer of payment, he must set out whether he is offering to pay in full or by instalments. Under these circumstances he must set out his income and expenditure so the Court can consider whether his offer is reasonable.

If the claimant accepts the defendant's offer, he can apply for a Court judgement so that the offer will become an Order of Court. A Court Order is enforceable against the defendant in a number of possible ways. If the claimant rejects the offer, he can apply to the Court for what he claims is the appropriate Order as to lump sum payment or instalments etc.,. If the claim is for less than £50,000.00 a Court Officer rather than the Judge, will decide the rate of payment, without a Court hearing.

Court officers or the Judge may make a decision, without any hearing but if a hearing is requested the parties must be given seven days notice. The Court takes into account the defendant's means, statement of means, the claimant's objections and other relevant factors.

Where a defendant admits liability but the amount is unspecified, it must be assessed by the Court. A so called "disposal hearing" is heard, by which the Court determines the extent of damages, compensation or other appropriate order that is to be given. Likewise where the amount claimed is unspecified and the respondent makes an offer it can either be accepted by the claimant or the claimant can apply to the Court to determine the amount of the award.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.