



**RS** ROBERT G.  
SINCLAIR  
& CO

Debt Recovery  
Services

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## INTRODUCTION

It no longer comes as a shock to discover that our society is enormously dependent on financial credit. Consumer credit is a part of everyday life for many people, helping to smooth the ebbs and flows of income and expenditure.

With the debt tide rising, many debtors are at risk of drowning. This often makes the recovery process difficult.

Most businesses spend a significant amount of time attempting to recover payments.

Often efforts to recoup money are futile as businesses do not always have the skills or expertise to enforce payment.

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## OUR PEOPLE

# Our Debt Recovery Department



### Edmund Sinclair LL.B DIRECTOR

Edmund Sinclair, educated at University of Ulster, specialises in Lender Services, Insolvency and Business Restructuring. He currently manages a top 5 UK Bank mortgage litigation contract and has extensive experience of asset and debt recovery.

He conducts the day to day operations of a large mortgage litigation team and has carried this out for 20 years, ensuring that the firm adheres to stringent service level agreements. Edmund has developed a team within lender services to proactively address rehabilitation issues in order to maintain the position of the lender within a difficult property market. He has extensive experience in all areas of recoveries including asset recovery, shortfall recovery and bankruptcy and his clients include lenders and large corporations.

Stemming from his experience in these areas he provides training and seminars on repossession procedures e.g. to Citizens Advice Bureau and debt advice agencies.

Edmund has been instrumental in developing core ICT competencies of the firm.

### Robert G Sinclair Solicitors

Located in the heart of Belfast, Robert G Sinclair & Co Solicitors has one of the fastest growing and most experienced legal teams in Northern Ireland, covering an extensive range of expertise from Corporate Law, Litigation, Residential and Commercial Property to Insurance, Debt Recovery and Probate.

As one of Northern Ireland's most dynamic and multi-skilled commercial and public facing law firms, our success is based on delivering the highest standards of service to our clients.

Whether you are a leading UK financial institution, pursuing a personal injury claim, small business or a house buyer wanting advice on a mortgage or recovering debt, you will receive the same dedicated personal service, attention to detail and high level of expertise that keeps our clients - global companies and private individuals alike - returning time and time again.

## OVERVIEW

# Managing Debt & Cash Flow

For **Debt Recovery** to be successful and profitable, it needs to be handled methodically and proficiently. We recognize that access to cash is key to survival and maintaining control over debt is more crucial than ever.

In addition to enforcing the recovery of payment, we provide an alternative dispute resolution which allows businesses to continue their working relations with their debtor, while managing their debt and cash flow.

Before any recovery proceedings take place, the creditor should prompt for the payment of invoices. Invoices should state the period for payment, and after this date, if payment is not received, statutory interest can be charged under the **Late Payment of Commercial Debts (Interest) Act 1998**.

Once the date for payment expires, the creditor should place a telephone call to the debtor, followed by a reminder letter.

If this fails then passing the matter over to a solicitor should follow.

# Points to Consider as a Creditor

- 1 Are your credit control procedures sufficient?**
- 2 Do you have clear terms and conditions, outlining the period for payment? If not, can we help?**
- 3 How and when did the debt arise?** You have 6 years from the date of any agreement, contract, invoice or breach to instigate court proceedings to recover a debt.
- 4 Has the debtor sufficient income or assets to discharge the debt?**
- 5 Do you know if the debtor owns property jointly or otherwise?**
- 6 Are there any previous Court Judgments against the debtor, have they been paid?**
- 7 Have Enforcement Proceedings been instigated against the debtor by other creditors?**
- 8 What evidence exists to prove the debt?** For example, invoices, terms and conditions, correspondence, retention of title clause, security, bank statements or verbal evidence only?
  - a** If the Debtor is a limited company:
    - 1 What is the full title, registered office and other trading addresses?
    - 2 Does the company own or lease the premises?
    - 3 What assets does the company own?
    - 4 Do you have any knowledge of its general performance and or credit history?
  - b** If the debtor is a partnership:
    - 1 What is the full trading title and business address?
    - 2 What are the names of the various partners?
    - 3 Do you have any knowledge of the general performance and or credit history?
  - c** If the Debtor is an individual or sole-trader:
    - 1 What is his/her full name and trading address?
    - 2 What is his/her home address?
    - 3 Do you have any knowledge of his/her credit history?
    - 4 Is the debtor in gainful employment?
    - 5 What assets do they own?
- 9 If the debt is in respect of rent arrears, is there a guarantor? If so, do you have the full name and address of the guarantor?**

## OVERVIEW

# Preliminary Action

## Letter before action

### It is good practice to send a seven-day demand letter prior to commencing legal proceedings.

Before instigating proceedings, we will require the full name of the individual or registered title of the company and their last known address. This letter demands payment within seven days and puts the debtor on written notice that failure to pay will lead to legal proceedings being instigated without further notice or warning.

We will send a reminder letter after seven days, which we will follow up with a telephone call, if possible. This may encourage payment in full or encourage a payment plan to be negotiated. If there is no satisfactory response within 7 days of the reminder letter, we will revert to you for your instructions.

## Status Checking

**This is highly recommended.**

**These preliminary enquiries are required to ascertain whether it is cost effective to issue legal proceedings.**

There are various searches that can be done however, the costs associated with the searches are not always recoverable from the debtor.

Action	Purpose	Outlay
EJO Search	Should indicate whether enforcement proceedings are registered against them	£10
Bankruptcy Search	Should indicate whether the debtor is already bankrupt, or been presented	£24
Company Search	May help identify the Directors, registered office and when accounts were last filed.	£24
Registry of Deeds Search	May help identify whether property is owned by the debtor. This will not show properties that have been bought outright, without a mortgage.	£15 - £90
Land Registry Search	This may show any mortgages/charges and any pending dealings on folios. If a folio number is known	£14 - £19
Asset Tracing	This is an attempt to uncover additional, undeclared or transferred assets. To test the credibility of the Debtor- have they made full disclosure of the assets and to provide a level of comfort before entering into debt settlement agreements with the debtor. This trace is geared towards Debtors who have multiple assets or business interests.	From £250+

**OVERVIEW**

## Negotiating Payment Plans

**It often is impossible to recover all of the debt in one fell swoop.**

Businesses should be open to the idea of collecting debts by entering into payment plans with their debtors, striking a balance between what the debtor can afford to pay and what is a reasonable period to allow them to make such payments.

## Issuing Legal Proceedings

**Issuing proceedings against the debtor will not always guarantee full payment of monies owed.**

Even if the Court finds in our client's favour, additional enforcement or injunctive proceedings may be required to recover the debt and even then, there is no guarantee of full or partial payment of money owed.



**WHICH COURT?**

# Your Court Options

## Small Claim's Court

Debts up to £3,000

**If the disputed sum is for less than £3,000, the claim can be issued in the Small Claims Court.**

The main attraction here is that the application process and hearing is very informal and the strict rules of evidence do not apply. It should be noted that the costs associated with the Small Claims Court are not recoverable (except for the court fee).

If the matter becomes defended, costs can significantly increase and it is therefore essential to consider cautiously whether it is prudent to pursue a claim. It is more cost effective for businesses or individuals to run their own small claim actions without the assistance of a solicitor.

The process is relatively straight forward and adapted for those who wish to represent themselves.



### Small Claims Outlay

Debt Amount	Court Outlay
Up to £300	£35
Exceeds £300 but not £500	£59
Exceeds £500 but not £1000	£83
Exceeds £1000	£118

## WHICH COURT?

### County Court

The jurisdiction of the County Court is any claim up to £30,000.

With the County Court (Amendment) Rules (NI) 2013, any award for costs on a successful claim, or Defence, is on a scale and creditors will be advised of their cost risk before proceedings are issued.

We will prepare the civil bill and submit to the courts together with a cheque for the court outlay. It will then be stamped by the court and served on the debtor. The Debtor has 21 working days after service to lodge a Notice of Intention to Defend.

**a Should the debtor pay?**

Within 21 days of receiving the civil bill, they will be liable to pay the original debt, applicable interest and recoverable fees awarded by the court, known as 21 day costs.

Judgment has been obtained the debtor is liable to pay the principle sum, interest and a higher scale of legal costs.

**b If the matter is undefended**

If the debtor fails to respond within 21 days, we will send an affidavit of Debt to you, which must be sworn before a solicitor. We will then submit the paperwork with the court fee of £89 and a County Court Judgment obtained. Once a

**c If a Notice of Intention to Defend**

The issue of costs must be considered. Our fees for a contested matter will be marked in accordance with the County Court Scale fees which are significant. If you were to lose a contested case, you will be liable for our costs and the Debtors Legal Costs.



#### County Court Outlay

Debt Amount	Court Outlay
Civil Bill not exceeding £1000	£177
Exceeding £1000 but not £5000	£196
Exceeding £5000	£219
Mark Judgment	£89
Affidavit	£7



## WHICH COURT?

### High Court

The High Court therefore, is for any claim over £30,000.

We will prepare the Writ of Summons and send to the Court together with a cheque in the sum of £237 in respect of the Court outlay.

It will then be stamped by the court and a copy served on the debtor. The debtor has 14 working days after service in which to lodge a memorandum of appearance.

**a Should the debtor pay?**

Within 14 days of receiving the Writ, the debtor will be liable for the principle sum, applicable interest and recoverable costs.

**b If the matter is undefended**

If the debtor fails to respond, we will submit the relevant papers to the Court together with a payment of £89 to the court and a High Court Judgement will be obtained.

Once a judgment is obtained, the debtor is liable for the principle sum, applicable interest and recoverable costs.

**c If a Memorandum of Appearance is lodged**

If this is received, the debtor intends to dispute the debt. At this stage, the issue of costs must be considered. If you are unsuccessful in your case, you are liable for both our costs and the legal costs of the debtor.



#### High Court Outlay

Debt Amount	Court Outlay
Writ of Summons	£237.00
Any interlocutory Application	£137.00
Judgment	£89.00
Affidavit & Exhibit	£7.00
Set- Down fee (if required)	£355.00

## INSOLVENCY PROCEEDINGS OVERVIEW

# Insolvency Proceedings

## Statutory Demands

**A statutory demand can be issued against the debtor.**

In essence, this allows the debtor 21 days from the date of service to pay the outstanding sum and only 18 days upon which to apply to the court, for the demand to be set aside on grounds of irregularity or otherwise.

Upon the expiration of 21 days, assuming an application to set aside has not been made, the creditor can issue a Bankruptcy Petition (personal debtor) or Winding-Up Petition (company debtor).



### Statutory Demand Outlay

Debt Amount	Court Outlay
Service of Statutory Demand	£55- £90
Affidavit of Service	£7

## INSOLVENCY PROCEEDINGS OVERVIEW

### Petition for Bankruptcy or Winding Up

A petition follows the expiration of a Statutory Demand, drafted by the creditor's solicitor and must be personally served.

In the case of a registered company the Petition must also be advertised.



#### Bankruptcy Outlay

Debt Amount	Court Outlay
Court Fee - Petition presented by Debtor	£137
Court Fee - Petition presented by Creditor	£177
Hearing of a public examination	£177
Any additional Application	£137
Service of Petition	£55 - £90
Swearing Proof of Service (Petition)	£85
Swearing Truth of Petition	£85
Deposit to Official Receiver Self-Petition	£525
Deposit to Official Receiver Self-Petition/Petition by creditor	£700
Bankruptcy Search	£24
Request for a certificate to discharge bankruptcy	£89

#### Winding Up Outlay

Debt Amount	Court Outlay
Court Fee- Petition to Wind-up Company	£177
Service of Petition	£55 -£90
Swearing Proof of Service	£7
Swearing truth of petition	£7
Deposit to Official Receiver	£1165
Company Search Fees	£24
Advertisement Fee at Gazette	£100

## ENFORCEMENT OF DEBT OVERVIEW

# Enforcement of Debt

The EJO cannot guarantee recovery, especially if the debtor has judgments registered against them before yours. To ascertain the full extent of the debtors financial position, you may wish to apply for a discovery order as to the debtors means. If the debtor is unemployed and has no assets, it may not be worth the expense of pursuing with enforcement.



## Enforcement of Judgments (EJO)

**The EJO cannot recover what is not there.**

To ascertain the full extent of the debtor's assets, you may wish to apply for a Discovery Order as to the Debtors means.

## The Procedure

**1 Notice of Intention to Enforce a Judgment – We will prepare a notice which must be issued and served prior to an application for full enforcement, or discovery.**

This is sent to the EJO in duplication together with a cheque in the sum of £24 and served upon the debtor by the EJO. The notice will make a claim for the judgment sum and interest at 8%, any costs awarded by the Court and the EJO outlay of £24. No further action may be taken for 10 days from the service of the Notice. If there is no response the next step is to make an application for full enforcement or an application for discovery.

**2 Application for Full Enforcement – we will prepare the application for full enforcement and lodge with the EJO on receipt of the EJO fee, which is calculated with reference to the amount of the debt.**

The initial EJO fee of £24 and the application fee will be added to the total amount pursued by the EJO. The EJO will only allow a nominal fee in respect of our professional fees, the remainder will be your

responsibility. Upon receipt of the application the EJO will request the Debtor to attend for interview, to ascertain their financial status and produce a means report. If the Debtor fails to attend, the EJO can issue a warrant for arrest against the debtor.

**3 Application for Discovery – Should debt exceed £3000, you may wish to consider an application for discovery prior to Full enforcement application.**

The EJO will prepare a report on the debtor's financial status. This should help you make an informed decision on whether the debtor is a "good mark" for judgment.

## ENFORCEMENT OF DEBT OVERVIEW

# Enforcement of Judgement Office Orders

## Attachment of Earnings

**If the debtor is employed, the EJO may serve an attachment of earnings order on the debtor's employer.**

The employer will deduct a specified sum from the debtor's wages and forward to the EJO for onward payment to the Creditor.

## Seizure Order

**This order permits the EJO to seize sufficient goods or assets to secure payment for the debt.**

There are specific items which cannot be seized. These are as follows; clothes, furniture, goods subject to HP agreements, tools of trade to the value of £100 and any goods in the hands of a receiver who has been appointed by the court.

## Instalments Orders

**If the debtor is self-employed, the EJO will request payment by way of instalment which will specify the date and amount of payment to be made.**

Should the debtor default in payment, committal proceedings can't be issued to have the debtor imprisoned. This will require separate proceedings which may be expensive.

## Order Charging Land

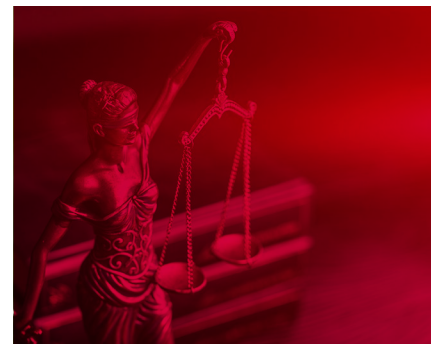
**If a debtor owns property, whether jointly or otherwise, we can request that the EJO issue a charge on the land, in an effort to secure payment.**

When the order has been registered against the property and the property is sold or re-mortgaged, payment will be secured from the net proceeds of the sale. An order forcing sale can only be made if there are no other legal or equitable interest in the property. An order charging land is only viable for a period of 12 years from the date of judgment.

## Order Appointing Receiver

**If the debtor receives monies from another source, for example a personal injury claim or from a mortgage, the EJO can serve this Order to the third party, thereby appointing them the receiver.**

Once served on the receiver, the receiver is obliged to forward the monies to the EJO who will forward payment to the creditor which has priority.



**NOTE:** The EJO cannot guarantee recovery, especially if the Debtor has judgments registered against them before yours, or if they have disposed of their assets to avoid payment.

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