

Mercian Law

Commercial Debt Recovery Specialists

What you have to do to get paid

Where do you start?

Have you been unsuccessful in getting your overdue invoices paid?

Would you like to settle the debt with your customer without the need to start Court action?

If so, you need to get advice as soon as the debt becomes overdue:

1. Provide us with all the information you have in relation to the debt, to ensure we have a complete understanding of the issues. Also you will need to exchange this with the other side, so you can understand each other's position and enable you to make an informed decision about any proposals for settlement, and whether or not to proceed.
2. Consider the use of Alternative Dispute Resolution. This could be Mediation, Arbitration, or Trade Association involvement.

You must try and make appropriate attempts to resolve things without Court proceedings. Otherwise, even if you win your case at Court, you could be sanctioned in your claim for interest and costs.

Whether you are the creditor or debtor, it is important you consider the actions you are taking comply with the [Practice Direction on Pre Action Conduct](#); it is intended as a guide for those that are not legally represented, that have a straightforward claim that is likely to be disputed. It is not intended to apply to debt claims where the balance is not disputed. Click through to view the protocol on the Ministry of Justice website. If your dispute ever comes before the Courts; compliance with this Practice Direction will be taken into consideration when the Judge makes Orders about who should pay costs. The Court will require you to explain what steps you have taken to comply prior to the start of your claim. If you have failed to comply you will need to explain why. However, the Court will be less concerned with any minor or technical shortcomings and will take into consideration the size, importance and urgency of the claim. Sanctions the Court may impose against you or your debtor in the event of non-compliance are:

- Staying (suspending) the claim until steps have been taken
- Award costs against you, this can happen even with small claims (under £5,000)

- Refuse to award you all or part of any interest claimed

It is fundamental you act in a reasonable and proportionate manner in all dealings with your debtor. If you are concerned about having representation and not being able to claim back your costs, Mercian Law will ensure that the costs incurred when we are instructed are proportionate to the complexity and value of the claim.

Before Issuing Proceedings

If you are owed money, you must send a letter before action, detailing what is owed and why; and

If you are the debtor, you should give a full written response acknowledging the letter before action. The response should ideally be sent within 14 days, unless the matter is complex. Then an acknowledgement should be sent in 14 days, and a comprehensive response be sent within 30 days. More than 30 days for a full response would only ever be deemed reasonable if the matter was particularly complicated.

Mercian Law only charge £10 + VAT for preparing and serving a letter before action. Sometimes, having a letter on solicitor's letterhead has more of a reaction, and even with small balances our fee is competitive enough for you to take advantage of a qualified representative.

If proceedings are commenced before the Practice Direction requirements have been complied with, you will have to make a request to stay the proceedings to enable compliance.

Alternative Dispute Resolution "ADR"

Taking action in the Courts should always be the last resort, and not commenced if settlement discussions are ongoing. Even though ADR is not mandatory, the Court will ask what forms of ADR were either used or considered before embarking on litigation. These options include:

- Direct discussion and negotiation, the most cost effective.
- Mediation, the negotiation with assistance of an independent third party
- Early neutral evaluation, obtaining a third parties opinion
- Arbitration, where the independent third parties decision/ opinion is binding.

If you subscribe to membership of a trade association, check with them if you have an Arbitration scheme.

Even if litigation is commenced, you should always remain open to settlement discussions right the way up to the trial.

Letter before Action

If you are bringing the claim the letter should include:

1. Your full name and address
2. Why you believe you are owed the money
3. A summary of your understanding of the facts on which you base your claim
4. What you want from the debtor
5. An explanation on how the amount claimed has been calculated
6. List the documents which you intend to rely upon

7. State what type of ADR you believe is most suitable and invite the debtor to agree to this
8. The date for a response to be received, allowing a reasonable amount of time
9. Identify and request copy documents you require from the debtor
10. Refer the debtor to the Practice Direction, particularly paragraph 4 regarding the Courts ability to impose sanctions for failure to comply
11. State that by ignoring the letter mat lead to proceedings being issued and increase the debtors exposure to costs

Acknowledgment of Letter of Claim

If the debtor is unable to provide a full response to the Letter of Claim within 14 days, they should send a written acknowledgment, which should state:

1. Whether an insurer is to be involved
2. The date which a full written response will be provide by the debtor or their insurer, if this is above 14 days, give reason why a lengthier period is required
3. Request further information to enable a full response to be prepared
4. That the debtor is seeking advice, and from whom, and when they expect to receive that advice and be in a position to provide a full response.

It is reasonable to allow 14 days for advice to be sought.

Full Response to Letter of Claim

The reponse to the letter of claim should either accept the claim in whole or in part, or state if the claim is denied and that it will be defended.

Unless the whole claim is admitted, the response should:

1. Give reasons why the claim is not accepted, detail which elements are agreed and those that are denied, and the basis of the dispute
2. Whether a counterclaim is intended, and if so, details of the counterclaim equivalent to the letter of claim
3. Who is responsible for the problem leading to the dispute, and a summary of the facts relied upon
4. Whether to proposals for ADR are agreed, and if not, why they aren't and any alternative suggestions
5. List the documents to be relied upon
6. Enclose copies of the documents requested in the letter of claim, or explain why they will not be provided
7. Identify and request copies of further relevant documents that you wish to see

Mercian law doesn't just act for those that are bringing a claim, we also act for those that are defending proceedings. If this is the position you are currently in, please give us a call to discuss your options and fees involved.

Reply to the Response to the Letter of Claim

You should provide the documents requested by the Defendant as soon as possible, or explain why the documents will not be provided.

If there is a counterclaim, the equivalent to the response to the Letter of Claim needs to be prepared and served within 14 days

If the above procedure is followed, the parties should have ample opportunity to resolve matters without Court involvement. At the very least it will narrow the issues and, therefore, the potential costs.

Even if this procedure has been exhausted and the claim is still unresolved, we will still encourage you to review your position to see if Court action can still be avoided.

If your claim is being defended, Mercian Law charge a reasonable hourly rate of £174 + VAT, for assisting in these circumstances. In order to assist with budgeting for these fees, we will discuss with you costs estimates to reach certain milestones of the claim, and will interim bill for costs to prevent a large bill on conclusion. Our fees are based upon the guideline rates for Summary Assessment. Should your claim be successful at trial, you should receive a Costs Order for the fees paid to Mercian Law.

Information to be provided in a claim where the Claimant is a business and the debtor is an individual

1. Provide details on how the money can be paid
2. State that the debtor can contact you to discuss possible repayment options, and provide the relevant contact details; and
3. Inform the debtor that free independent advice and assistance can be obtained from the following organisations.

INDEPENDENT ADVICE ORGANISATIONS

Organisation	Address	Telephone Number	Web site
National Debtline	Tricorn House 51-53 Hagley Road, Edgbaston, Birmingham, B16 8TP	FREEPHONE 0808 808 4000	www.nationaldebtline.co.uk
Consumer Credit Counselling Service		FREEPHONE 0800 138 1111	www.cccs.co.uk
National Association of Citizens Advice Bureau			www.citizensadvice.org.uk
Community Legal Advice		0845 345 4345	www.clsdirect.org.uk

Mercian Law provides this information within the letter before action, but it can be provided at any time prior to the commencement of proceedings.

The information provided within this guidance note is for information purposes only, and is not to be substituted for obtaining professional legal advice in relation to your specific claim. Mercian Law will not accept any responsibility for action taken as a result of the information contained in this publication.