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## Commercial Debt Recovery for Businesses

### Cost Information

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At Heckford Norton we have extensive experience in debt recovery and we frequently act on behalf of businesses seeking payment of commercial debts.

There are various debt recovery strategies available, and we set out the broad range of options and fees below.

Such cases can vary considerably in terms of their complexity, and the legal fees will also vary according to the level of assistance required of us in each case.

The following costs apply where your business's claim is in relation to an unpaid invoice which is not disputed and where enforcement action is not needed.

Debt value	Court fee	Our fee (excl VAT)	Total (excl VAT)
Up to £5,000	Up to £205	£565 - £2,700	£770 - £2,905
£5,001 - £10,000	£455	£565 - £2,700	£1,020 - £3,155
£10,001 - £100,000	5% of value of the claim (£500 - £5,000)	£565 - £2,700	£1,065 - £7,700

The rate we charge for debt claims is £225 + VAT per hour.

If you wish to proceed with a claim you should note that:

- The VAT element of our fee cannot be reclaimed from your debtor if your business is registered for VAT.

- Interest and compensation may take the debt into a higher banding, with a higher cost. You are entitled to charge interest on sums owed which are overdue. The date at which sums become overdue and the rate at which interest can be charged will either be provided for in your contract documentation or governed by the law relating to business to business debts. Where the contract documentation does not mention these points, payments become overdue after 30 days and interest can be charged at 8% above the Bank of England base rate. Interest on business to consumer debts is at the discretion of the Court once proceedings have been issued. Under the Late Payment of Commercial Debts (Interest) Act 1998 compensation for business to business debts can also be charged in the sum of £40 for debts worth less than £1,000, £70 for debts between £1,000 and £9,999.99, and £100 for debts of £10,000 or more.
- The costs quoted above are not for matters where enforcement action, such as the bailiff, is needed to collect your debt.
- The above estimates are based on the proviso that the Debtor is based in and subject to the jurisdiction of England and Wales.

Factors that would mean the lower end of the fee range would not be applicable include (but are not limited to) the amount of documentation there is to review, the way in which the debt is to be asserted (for example if it arises out of a complex trading history which would need to be set out in correspondence and court papers opposed to a standalone invoice which is self-evident) and the level of advice you may require as to the process. We would be happy to provide a more detailed estimate of the fees once we have had the chance to take your instructions and review the paperwork relating to the debt.

Our fee includes:

- Taking your instructions and reviewing documentation
- Undertaking appropriate searches
- Sending a letter before action to the debtor [Please note that if the response to this letter is a denial of liability, then this would take the matter out of this fee structure and the claim would fall to be dealt with as a Disputed Debt Claim (see below)]
- Receiving payment and accounting to you, or if the debt is not paid, drafting and issuing the court claim
- Where no Acknowledgment of Service or Defence is received, applying to the court to enter Judgement in default
- When Judgement in default is received, writing to the debtor to request payment
- If payment is not received within 14 days, providing you with advice on next steps and likely costs

Matters usually take between 4 - 30 weeks from receipt of instructions from you to receipt of payment from the other side, depending on whether or not it is necessary to issue a claim. This is on the basis that the other side pays promptly on receipt of Judgement in default. Where proceedings are issued we are dependent on the Court and their processing times. If further Court action or enforcement action is needed, the matter will take longer to resolve. Please see the sections below on enforcement and disputed debt claims for more information.

If the other party disputes your claim at any point, then the matter is regarded as disputed even if the defence shows limited or no prospects of succeeding. We would then discuss with you any further work required and provide you with revised advice about costs. Those additional costs would be charged on the hourly rate basis. Please see the section below on Disputed Debt Claims.

### Alternative Debt Recovery Options:

Instead of commencing court proceedings for debt, you may decide to opt for insolvency proceedings against the debtor. This would include serving a **Statutory Demand** on the debtor, which gives notice that if the debt is not paid within a specific period, insolvency proceedings would be commenced, leading to bankruptcy (for an individual) or winding up (in respect of a company). Some debtors prefer to pay a debt rather than face such proceedings, so this can be a successful strategy in some cases. If you wish to adopt this route, we can advise you of the relevant costs and disbursements, including Petition fees and Official Receiver's Deposit. Please note that if the debt is disputed it is not appropriate to use this method and the alleged debtor would be likely to apply to the court for the Statutory Demand to be set aside with an order for costs against you.

Bear in mind however that where a company or person is declared insolvent it is extremely unlikely that you will obtain the sums owed in full, especially if you do not hold any form of security over the debt. At best you may receive a percentage of the sums owed which will be determined by the trustee in bankruptcy or administrator or liquidator of the company.

Alternatively you may prefer to use a **debt collection company**, in which case we can advise you with regard to suitable agencies to be instructed and their terms of business.

### Enforcement Action:

Where a Court Order for a sum to be paid by the Debtor is obtained there is no guarantee of payment, and enforcement action may be required. It should always be borne in mind that the debtor might not have the funds to pay the sum ordered, but we will work with you to ascertain the most favourable methods of enforcement. We will advise you as to the likely costs, as appropriate.

Methods of enforcement include:

- Insolvency proceedings
- Bailiffs / High Court enforcement Agents
- Charging Orders on property
- Attachment of Earnings Order
- Third Party Debt Orders
- Orders to Obtain Information

### Disputed Debt Claims:

It can sometimes be the case that despite your belief that there could be no defence to a claim for debt, the debtor thinks otherwise, and it is not unusual for a debt claim to become a contested breach of contract claim. In such a situation there are many other factors to be taken into account in terms of the legal work required to be done and the costs involved. Accordingly we cannot here provide estimates of likely costs for such work but we will always provide an estimate once we have your specific instructions and a better understanding of the issues present.

At Heckford Norton we have extensive experience of contested claims in the County Court and High Court. Here is an indication of the key stages to be dealt with in such cases:

- Taking your initial instructions, reviewing the papers and advising you on merits and likely prospects (this is likely to be revisited throughout the matter and subject to change)

- Profiling the debtor to consider the commercial reality of pursuing them
- Considering which option to take and complying with the relevant pre action protocol
- Reviewing and advising on the claim or response from other party
- Considering and advising on the costs of mediation and Exploring settlement and negotiating settlement throughout the process in your best interests
- Preparing and issuing court papers, such as a Claim Form or Defence
- Reviewing and considering any Defence
- Drafting a reply to Defence (if required)
- Preparing a List of relevant Documents
- Preparing (or considering) a schedule of loss
- Exchanging documents with your opponent and agreeing a bundle of documents
- Taking statements from witnesses, drafting witness statements and agreeing their content with witnesses
- Instructing Counsel to advise on the merits, and reviewing such advice with you
- Preparing a bundle of documents for the hearing
- Reviewing and advising on your opponent's witness statements
- Agreeing a list of issues, a chronology and/or a list of witnesses
- Preparation and attendance at the Final Hearing, including preparation of Instructions to Counsel.

The stages set out above are an indication only, and additional stages may be required in certain situations.

#### Recovery of legal fees:

The general Court principle is that there is no entitlement to recover legal fees from a debtor where the debt (and interest) does not exceed £10,000, in the absence of exceptional circumstances. For higher value claims, we will be pleased to give you specific advice appropriate to the circumstances of your case.

Note that where the claim is unsuccessful there is a risk that you could be ordered to pay sums your opponent has incurred in respect of legal fees and court fees depending on the value of the claim.

Please do not hesitate to contact us if you would like further advice on any of these issues.