

# Receivables Finance Litigation Guide

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## Introduction

The aim of this guide is to provide you with information regarding the process for recovering debts through legal action. By referring a debt for legal action, we're hoping to encourage prompt payment from your customer and provide you with a simple and cost effective resolution.

## The Basics

In the event that a debt remains unpaid, we may take any legal action we consider appropriate to recover the debt or alternatively, we may agree to reassign the debt to you. If we decide to take legal action, we'll usually instruct Eversheds Sutherland (International) LLP ("ES"), a leading commercial law firm, to recover the debt on our behalf. ES have a dedicated team of recoveries specialists to deal with these cases on our behalf. The contact details of the person dealing with the matter at ES will appear on the litigation diary on our internet platform and will be sent to you by email when ES are instructed to send a letter of claim.

## Undefended Claims

- ES will initially send your customer a letter of claim seeking payment or proposals for payment within 14 days. ES will aim to send the letter of claim within 24 hours of being instructed by us to commence legal action.
- ES will also make attempts to contact the debtor by email and/or telephone to obtain payment. Details of contact made and proposals received and accepted will be uploaded onto the portal by ES.
- In the absence of payment or reasonable proposals for repayment, ES will send a letter of claim to the customer which is sent in a prescribed manner to comply with the Court rules. ES will confirm to you by email when this letter is sent. ES will aim to call the customer within 3 working days of the letter being sent to try and secure payment.
- If a settlement cannot be agreed and you do not want legal action to commence, then the debt will be reassigned to you for you to pursue the debt, and the debt will not be credit protected.
- If the customer informs ES that the debt is disputed you will be informed of this and ES will provide advice on next steps.
- Where ES received no response from your customer, it will commence legal proceedings. ES will aim to do this no earlier than 30 days after being instructed to commence proceedings. We will inform you by email and through our internet platform that legal action has commenced.
- Before commencing legal proceedings, ES may need to request additional information and documentation from you regarding the debt. You must provide any information requested as soon as possible, otherwise delays in recovering the debt may occur.

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- ES will usually issue the claim against your customer in the County Court Bulk Centre (CCBC) in Northampton.
  - The CCBC will serve the claim on your customer, and it will have 14 days from service to pay the debt, admit the debt and make proposals for payment, acknowledge service (which allows the customer 28 days from service of the claim form to file a full response), or file a Defence. Alternatively, your customer may not respond to the claim at all.
  - If the customer admits the debt, or fails to respond, ES will request judgment against the customer for immediate payment. The customer may request time for payment. If this request is unreasonable, ES will object, and the Court will make a decision on the timescale for payment. Once judgment is obtained, and payment is not made in accordance with its terms, ES will proceed to enforce the judgment.
  - If the customer files a Defence, ES will provide advice on next steps.

### **Enforcement**

- Where the debt is under £600.00 and where it's commercial to do so, ES will apply for a Warrant of Control by which a County Court Bailiff may enter premises, and take control of goods to satisfy the judgment unless the debt is paid.
- Where the debt is over £600.00, ES will apply for a Writ of Control by which a High Court Enforcement Officer may enter premises, and take control of goods to satisfy the judgment unless the debt is paid.
- Other enforcement options include: charging orders (which secures the judgment over a property), orders for sale (whereby a charged property can be sold), third party debt orders (which usually requires a bank to pay over monies standing in the customer's account to satisfy the judgment), attachment of earnings order (which requires an individual customer's employer to deduct payments from his/her salary).
- Insolvency options include: bankruptcy for customers who are individuals, and winding up for customers who are corporate entities.

### **Costs of Undefended Claims**

- ES will charge the fees for Undefended Claims <£100K as set out at Appendix 1.

### **Disputed Debts/Defended Claims**

- If a debt is disputed either before or after legal proceedings are commenced, the debt will become unprotected until the dispute is successfully resolved. When a dispute becomes known, ES will write to inform you and will likely request further information and documentation from you to support the claim. Again it is important for you to provide information and documentation promptly to avoid delays.
- If a debt is disputed after legal proceedings are commenced, the customer will file a Defence. The customer may also seek to set off or counterclaim for money or damages it says are owed to it. Again upon the filing of a Defence, if credit protected, the debt will become unprotected until the matter is successfully resolved.

- Upon the filing of a Defence, the claim is allocated to either the small claims track (<£10,000), fast track (£10,000-£25,000) or multi-track (>£25,000) usually based on the size of the debt. The court also set directions for the management of the claim through to a trial. In the small claims track, this will usually mean filing a witness statement with all supporting evidence 14 days before the trial. In the fast track and multi-track, this will mean providing formal disclosure of documents, preparing witness statement, and exchanging expert reports (if appropriate).
- If the Defence has no real prospects of success in our view, ES will apply for summary judgment and/or strike out to dispose of the claim without proceeding to a trial.

### **Costs of Defended Claims**

- Costs are always in the discretion of the Court. However, as a general rule, in the fast track (£10,000- £25,000) the successful party will usually be awarded their costs based on the relevant stage of the proceedings and band of complexity. If the claim is disposed of at trial, the successful party may be able to recover anywhere from £3,800 to £7,900 plus between 20% to 40% of the damages awarded (plus £760 per extra defendant). Fixed costs for Counsel's attendance at the trial range from £580 to £2,900 depending on the value of the claim.
- Similarly, in the intermediate track, the successful party will usually be awarded their costs based on the relevant stage of the proceedings and band of complexity. If the claim is disposed of at trial, the successful party may be able to recover anywhere from £6,660 to £29,000 plus between 15% to 22% of the damages awarded (less £1,400 if that party did not prepare the trial bundle). Fixed costs for Counsel's attendance at the trial range from £3,200 to £2,900 depending on the trial period and level of complexity.
- In the small claims track (<£10,000), the successful party will usually only be awarded set fixed costs, and not all the costs of pursuing the debt. It is therefore particularly important to ensure that pursuing debts <£10,000 is cost effective.
- Disputed debts are unprotected. However, provided we are successful in proving a disputed debt (through judgment, settlement or a payment from a customer), ES's costs will be split with you on the protected/unprotected split of the debt. For example: if a customer owes you £50,000, and you have a credit protection limit of £40,000, and a first loss of £1,000, £39,000 of the debt is protected, and £11,000 is not. Therefore, the debt is 78% protected and 22% unprotected. Assuming we are successful in proving the debt, you will only be charged 22% of ES's costs incurred (excluding VAT and disbursements).
- ES have agreed a set of fixed fees for claims over £100K and defended claims at Appendix 2. Note certain assumptions apply to these fixed fees. If your case falls outside these assumptions at any stage, ES will flag this and set out any additional fees to progress the case. Again, assuming we are successful, you will only be charged a percentage of these fees depending on the protected proportion of the debt. However, if we are unsuccessful in proving the debt, you will be charged all of ES's costs, and any costs we are ordered to pay your customer.

**Alternative Dispute Resolution**

- Due to the costs of pursuing defended claims through the courts, it is important that we consider alternative methods of resolving disputes at all times. This usually includes (amongst other things): making written offers, oral negotiation, settlement meetings, and mediation.

**Communication**

- You're encouraged to view the litigation diary in ES's portal for general update. The portal will be updated on at least a monthly basis, depending on the activity levels on the case.
- At appropriate stages in a case, ES may also contact you by letter, email or telephone.
- ES are bound to follow Court procedures and this will have an impact on the timescales involved in a case. ES will strive to provide the best possible service but if you have any concerns, please either speak to ES or us.

## Appendices

	Process	Action	Fee
<b>Appendix 1: Fixed Fees for Undefended Claims &lt;£100K (England &amp; Wales)</b>	1. Pre-issue:	Issue a letter of claim:	£91
		Seek repayment/negotiations	£181
	2. Issuing proceedings	Issue claim at CCBC and apply for Judgment in default	£302
	3. Enforcement	Enforcement advice	£130
		Applying for judgment in default of settlement	£336
		High Court Enforcement	£242
		Charging Order	£575
		Order for Questioning	£242
		Third Party Debt Orders	£484
		Attachment of Earnings	£242
Order for Sale (uncontested)	£2,419		
4. Insolvency	Statutory Demand (post Judgment)	£242	
	Bankruptcy	£907	
	Winding Up	£1,210	
5. Other	Re-determination of an instalment order	£242	
	Monitoring instalments	£121	
	Trace and lifestyle/Asset investigations	From £181	
<b>Notes</b>			
<ol style="list-style-type: none"> <li>1. The fees do not include VAT or disbursements. Typical disbursements are listed in Appendix 3.</li> <li>2. Pre-issue stage is 28 day collections cycle based on correspondence, email and telephony. Any disputes raising substantive defences will be referred to the defended team to be dealt with in accordance with the fixed fees at Appendix 2.</li> <li>3. The fees are on the basis these processes are undefended, straightforward and not of high value (&gt;£100K).</li> <li>4. The fee for monitoring instalments will be charged every 6 months.</li> </ol>			

	Action	Claim Type/Value			
		Small Claims	Fast Track	Intermediate Track	Multi Track
<b>Appendix 2: Fixed Fees for Claims over £100K and Disputed/ Defended Claims (England &amp; Wales, Scotland and Northern Ireland)</b>	1. Case assessment and advice	£327	£605	£847	£1,089
	2. Letter before action	£218	£437	£544	£653
	3. Pre or post LBA contact	£302	£907	£1,089	£1,512
	4. Issue and service of proceedings obtaining Judgment in default or admission	£605	£847	£1,149	£2,419
	5. Update case assessment / review further papers	£218	£327	£436	£544
	6. Summary Judgment/ opposing application to set aside Judgment	£544	£1,210	£2,419	£3,629
	7. Allocation	£218	£907	£2,177	£2,419
	8. Disclosure	£605	£2,722	£5,141	£6,653
	9. Witness Statements	£907	£3,024	£6,048	£9,923
	10. Expert Evidence	N/A	£1,814	£3,024	£4,838
	11. Trial Preparation/ attendance at trial	£874	£3,629	£6,653	£8,467
	12. Settlement discussions (excluding settlement meeting or mediation)	£302	£605	£907	£1,210



	Action	Claim Type/Value			
		Small Claims	Fast Track	Intermediate Track	Multi Track
	13. Whole Menu Price (from Defence being filed)	£3,233	£13,306	£24,737	£34,599
	14. Typical Part Menu Price (claims settled after defence filed or summary judgment application made)	£1,173	£2,420	£4,173	£5,928

### Notes

1. The fees do not include VAT or disbursements. Typical disbursement are listed in Appendix 3.
2. Each stage become chargeable once work commences on that stage.
3. Hearings attended by Agent or Counsel (only) save trial in the fast track and multi-track where case handler will attend.
4. Disclosure limited to 1, 2, 3 and 4 lever arch files for each Claim Type/Value respectively.
5. Witness statements limited to two witnesses of fact.
6. Expert evidence uncomplicated and limited to one expert per party.
7. Stages may be repeated more than once where applicable (e.g. settlement discussions).
8. Counterclaims, appeals, costs assessments, adjourned hearings will incur additional fixed fees.

	Action	Disbursement
<b>Appendix 3: Disbursements (England &amp; Wales) as at October 2023</b>	<b>1. Money Claims</b>	
	<b>Claim amount</b>	<b>Court-issued/CCBC</b>
	<£300	£35
	£300-£500	£50
	£501-£1,000	£70
	£1,001-£1,500	£80
	£1501-£3,000	£115
	£3,001-£5,000	£205
	£5,001-£10,000	£455
	£10,001-£15,000	5% of claim
	£15,001-£50,000	5% of claim
	£50,001-£100,000	5% of claim
	£100,001-£200,000	5% of claim
	>£200,000	£10,000
	<b>2. Non-money Claims</b>	
	County Court	£332
	High Court	£569
	<b>3. Hearing Fees</b>	
	Small Claims Track	From £27 to £346 depending on value
	Fast Track	£545
	Multi-track	£1,175
	<b>4. Other fees</b>	
	Application with a hearing	£275
Application by consent or without notice	£108	
Summons or order for a witness to attend	£21	

	<b>Action</b>	<b>Disbursement</b>
	<b>5. Enforcement</b>	
	County Court Bailiff	£83
	High Court Enforcement	£71 plus £75 other disbursements
	Charging Order	£119 plus £40 other disbursements
	Order for Questioning	£119
	Third Party Debt Order	£119
	Attachment of Earnings	£119
	<b>6. Counsel/Agent's Fees</b>	
	Agent to attend application hearing	£200-250 plus VAT
	Agent to attend small claim track trial hearing	£330-460 plus VAT
	Counsel to attend small claims track trial (typical) hearing	£750 plus VAT
	Counsel to attend fast track 1day trial (typical) hearing	£4,000 plus VAT
	Counsel to attend multi-track 2 day trial (typical) hearing	£9,000 plus VAT

	<b>Action</b>	<b>Disbursement</b>
<b>Appendix 4: Disbursements (Scotland and Northern Ireland) as at October 2023</b>	<b>1. Scotland</b>	
	Simple Procedure Claim (£0-£300)	£20
	Simple Procedure Claim (£301 - £5000)	£110
	Ordinary action, Writ (Above £5000)	£138
	Motion or Minute (Ordinary action)	£53
	Record fee (Ordinary action)	£124
	Proof fee (Ordinary action)	£59
	Service by Sheriff Officers - £86.03 (plus VAT) Additional Person	£86.03 (plus VAT) + £17.21
	Trace/Enquiries Report	up to £100.00 (plus VAT)
	Field enquiries by Sheriff Officers:	up to £100.00 (plus VAT)
	Local Agent's fee	£50 - £100 (plus VAT)
	<b>2. Northern Ireland</b>	
	Issue	
	< £1000	£195
	£1000-£5000	£216
	>5000	£242
	>30,000	£261
	Apply for Hearing Date	
	<30,000	£327
>30,000	£392	

	<b>Action</b>	<b>Disbursement</b>
	Application	£151
	Decree/Judgment	£98
	Witness Summons	£39
	Subpoena	£39
<b>Small Claims</b>		
	<£300	£39
	£300-£500	£65
	£500-£1000	£91
	>£1000	£130
<b>Enforcement</b>		
	Form 1 (Stage 1)	£26
	Form 3 (Stage 2):	
	£500	£159
	£1000	£239
	£5000	£628
	£10000	£778
	>£10,000	£841 + £2 per additional £100 claimed
<b>Bankruptcy Fees</b>		
	Individual Bankruptcy petition	£195
	Company Winding Up petition	£195
	Deposit for bankruptcy petition	£700
	Deposit for winding up petition	£1,165

	Process	Action	Fee
	<b>1. Fixed Fees for Undefended Claims</b>		
<b>Appendix 5: Fees (Republic of Ireland)</b>	1. Pre-issue:	Issue a letter of claim:	£91
		Seek repayment/negotiations	£219
	2. Issuing proceedings	Issuing proceedings and applying for Judgment in default in the District Court (less than €15,000)	£302
		Issuing proceedings and applying for Judgment in default in the Circuit Court (€15,000 - €75,000)	£986
		Issuing proceedings and applying for Judgment in default in the Circuit Court (€75,000-€100,000)	£1,210
3. Enforcement	Enforcement advice	£121	
	Instructing and liaising with Sheriff	£181	
	Registration of Judgment Mortgage	£302	
	Registration in trade gazettes	£108	
	[Instalment Order Proceedings] <sup>1</sup> [Discovery in aid of Execution] <sup>2</sup> [Garnishee Orders] <sup>3</sup>		
4. Other	Monitoring instalments	£121	

1. These processes are contested in the Republic of Ireland and may involve a number of Court appearances, as such they will be quoted on an individual basis.

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## **2. Assumptions – Undefended Cases**

2.1 The following assumptions apply to the fixed fees at Paragraph 1:

- They do not include VAT or disbursements. Typical disbursements are at Appendix 6.
- The fixed fees for pre-issue, enforcement and insolvency are on the basis these processes are undefended, straightforward and not of high value (>€100K). Any defended, complex or high value enforcement or insolvency work will be referred to the defended cases team.
- The fee for monitoring instalments will be charged every 6 months.

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## **3. Fees for Defended Claims**

3.1 Eversheds will provide HIF with staged fee estimates for defended claims in the Republic of Ireland.

Disbursements are charged at 1.68% of the overall fee. Stamp duty payable on originating documents is set out below.

<b>Appendix 6:</b>  <b>Disbursements (Republic of Ireland).</b> <b>Estimates as at October 2023</b>	<b>1. Stamp Duty on originating documents</b>	
	<b>Claim amount</b>	<b>Court-issued</b>
	<€5,000	€25.00
	€5000-€10000	€70.00
	€10,000-€15,000	€80.00
	€15,000-€75,000	€130.00
	<b>2. Enforcement</b>	
	Sheriff	€19.00
	Publication in trade gazette	€25.00
	<b>3. Counsel/Agent's Fees</b>	
	Agent to attend application hearing	€125-165 plus VAT
	Agent to attend District Court trial	€150-600 plus VAT
	Counsel to attend District Court trial	€950 plus VAT
	Counsel to attend Circuit Court 1 day trial (typical)	€4,000 plus VAT
Counsel to attend High Court 2 day trial (typical)	€11,500 plus VAT	



For existing clients, call: 01903 205181 or your Client Director/Manager. Lines are open from 9:00am to 5:00pm Monday to Friday excluding public holidays.

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## Accessibility

If you need any of this information in a different format, please let us know. **This includes large print, braille, or audio.** You can speak to us using the live chat on our website, visiting one of our branches, or by giving us a call.

There are also lots of other options available to help you communicate with us. Some of these are provided by third parties who are responsible for the service. These include a Text Relay Service and a British Sign Language (BSL) Video Relay Service. To find out more, please get in touch. You can also visit [business.hsbc.uk/accessibility](https://business.hsbc.uk/accessibility) or [business.hsbc.uk/contact-us](https://business.hsbc.uk/contact-us).

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