





## The content

# Debt Advice Handbook 15th edition

## Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

## Properties

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# 1. Starting a money claim

Debts regulated by the Consumer Credit Act 1974

Which court deals with the claim

Automatic transfers

The claim form

The particulars of claim

Responding to the claim form

## Filing and serving documents

Court proceedings start when the county court issues a claim form (Form N1) at the request of the creditor (known as the 'claimant').

A claim form cannot be issued in the High Court unless the creditor expects to recover more than £100,000 and can justify the matter being dealt with by a High Court judge. <sup>1</sup> This is rarely possible in ordinary debt cases, so there should be no reason for creditors to issue proceedings in the High Court. However, some creditors may be able to issue a claim in the county court, obtain a county court judgment and transfer the case to the High Court for enforcement (see here).

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<sup>1</sup> CPR PD 7A, para 2

## Debts regulated by the Consumer Credit Act 1974

The High Court cannot deal with claims related to secured or unsecured agreements regulated by the Consumer Credit Act 1974 (see here), or actions linked to such agreements, regardless of the claim amount. If you encounter such cases being dealt with in the High Court, get specialist advice.

## Which court deals with the claim

### Automatic transfers

Creditors start claims to recover a sum of money in the Civil National Business Centre (Business Centre) in Northampton (formed by the merger of the County Court Money Claims Centre in Salford and the County Court Business Centre in Northampton). Such claims are known as 'money claims'. Large creditors that issue county court claims in bulk and prepare claims on computer can start their claims in the Business Centre which charges a lower court fee. It deals with the matter by post or electronically, unless it is transferred to another court.

### Automatic transfers

The case is automatically sent (transferred) to the client's '**home court**' (ie, the county court hearing centre that serves the address where the client lives) if: <sup>1</sup>

- the client defends the action (see here); *or*
- there is a request for the redetermination of a decision relating to a client's an instalment

order by the court (see here); *or*

- the district judge decides that a request for an instalment order should be dealt with at a hearing; *or*
- there is an application to set aside, or vary the amount of, a default judgment (see here); *or*
- the creditor applies to increase the amount payable under a judgment (see here); *or*
- there is a request for a reconsideration of a decision by the court following a client's application to vary the amount payable under a judgment (see here); *or*
- the creditor applies for an information order (see here), a third-party debt order (see here) or an attachment of earnings order (see here). A request for a warrant of control (see here) is made to the Business Centre, unless the case has already been sent to another county court hearing centre.

In Business Centre cases, if the client's defence is that they paid the debt before the claim was issued, this is checked with the creditor before the case is transferred. This also happens if the client admits part of the debt but disputes the balance. Otherwise, all defences are checked with the creditor before the case is transferred.

Automatic transfers are only available if the defendant is an individual.

If automatic transfer does not apply, the court has the discretion to transfer a case if:

- it would be more convenient or fair for a hearing to be held in another court; *and/or*
- the facilities available at the court where the case is currently being dealt with are inadequate because a party or witness has a disability.

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## 1 r2.3(1) CPR

## The claim form

The claim form (Form N1) must contain a concise statement of the nature of the claim and a 'statement of value'. This states the amount the creditor is claiming and whether they expect to recover:

- not more than £10,000; *or*
- more than £10,000, but not more than £25,000; *or*
- more than £25,000 but not more than £100,000; *or*
- more than £100,000.

The amount claimed includes the court fee paid by the creditor to issue the proceedings and, if a solicitor has been instructed, an amount for the solicitor's costs. The court fee and solicitor's costs vary with the amount claimed. The claim form must state the amount of any interest claimed up to the date of judgment.

Details of the court of issue (usually, the Business Centre) and the unique reference number allocated to the case appear in the top right corner of the form.

The claim form must be sent to ('served on') the client within four months of issue. This is usually done by the court by first-class post. The claim form is usually deemed to have been received on the second business day after it was posted – ie, if posted on Monday, it is deemed to have been received on Wednesday (Saturdays, Sundays, Bank Holidays, Christmas Day and Good Friday are not counted). <sup>1</sup> In Business Centre cases, the claim form is deemed to have been served five days after issue. The five days includes weekends and bank holidays.

See here if the client states that they did not receive the claim form before judgment was entered or any enforcement action taken by the creditor.

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<sup>1</sup> r6.14 CPR; *Anderton v Clwyd CC* [2002] EWCA Civ 933

## The particulars of claim

The claim form must be accompanied by the 'particulars of claim', or these must be served on the client by the creditor within 14 days of the claim form being served. The particulars of claim must include a concise statement of the facts relied on by the creditor (including the details of any contract) and must be verified by a 'statement of truth' – ie, that the creditor believes the stated facts are true. A copy of any written agreement should (but not must) be attached (this is not required if the claim form and particulars of claim are issued by the Business Centre). <sup>1</sup>

If the claim form includes the particulars of claim, it must be accompanied by:

- a response pack, including an acknowledgement of service (Form N9);
- a form for admitting the claim (Form N9A);
- a form of defence and counterclaim to be used if the client disputes the claim (Form N9B);
- notes for the client on replying to the claim form (Form N1C).

If the particulars of claim are served separately from the claim form, the forms must be served with the particulars of claim. This may be important as the client's time for responding to the claim runs from the deemed date of service of the particulars of claim. <sup>2</sup>

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1 CPR PD 7B, para 1.4, and PD 16, para 7.3

2 In *Diriye v Bojaj* [2020] EWCA Civ 1400 the Court of Appeal held that a 'Signed For 1st Class' delivery was subject to the deemed service provisions regardless of the date on which it was actually signed for and delivered (in this case, three days after the deemed date of service)

## Responding to the claim form

### Filing and serving documents

The client must respond to the claim form/particulars of claim within 14 days of service (ie, the response must be received on or before the 14th day after the date they are deemed to have received the claim form/particulars of claim, regardless of when they actually received it), or within 19 days of issue if issued by the Business Centre. **Note:** all days count when calculating the 14- and 19-day period, not just 'business days'.

The client can:

- send ('file') a defence or counterclaim to the court (see here); *or*
- file an acknowledgement of service at the court within the 14- or 19-day period if they are unable to file a defence in time or wish to dispute the court's jurisdiction – eg, if a creditor has issued proceedings for an amount due under a regulated consumer credit agreement in the High Court rather than, as required, in the county court. Once an acknowledgement of service has been filed, the client must file the defence within 28 days of the date of service of the claim form/particulars of claim; *or*
- send ('serve') an admission to the creditor, admitting the whole of the claim (see here); *or*
- still send the admission to the creditor outside the 14- or 19-day period, provided the creditor has not requested a default judgment (see here); **1** *or*
- file an admission and defence at the court, admitting part of the claim but disputing the balance or making a counterclaim (see here).

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**1** From 6 April 2023, r12.3(3) is amended to clarify that where an admission with a request for time to pay has been made, default judgment cannot be entered even if the admission was made late.

## Filing and serving documents

Documents are normally served by post. However, parties can file documents at court by fax. <sup>1</sup> A document is not treated as filed until the court office's fax machine delivers it, so it is good practice to telephone the court and check it has been received. A fax delivered after 4pm is treated as filed the following day. Fax should not be used for routine or non-urgent documents nor, unless it is unavoidable, to deliver documents which attract a fee and those relating to a hearing that is less than two hours ahead. <sup>2</sup>

If a court or court office has published an email address for filing documents on the HM Courts and Tribunals Service website, the parties can send a document listed on the website to the court by email. This is not possible if a fee is payable for the particular step in the proceedings. Documents that can be filed by email include the acknowledgement of service, partial admission, defence and the directions questionnaire. <sup>3</sup>

If a claim is issued electronically, a client can file an acknowledgement of service, part admission and defence online. The claim form contains a password to enable them to access the case. A document is not filed until the court receives the transmission. The time of receipt is recorded electronically. If received after 4pm, the document is treated as filed on the next day the court office is open.

All parties to a claim can be served with documents, including the claim form, electronically if they have given their prior written consent to accept electronic service and an email address or fax number to which they should be sent. An email address or fax number included on a letterhead, claim form or statement of case is sufficient. <sup>4</sup>

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<sup>1</sup> r5.5 CPR; CPR PD 5A, para 5.3

<sup>2</sup> CPR PD 5A

<sup>3</sup> CPR PD 5B; see [justice.gov.uk/courts/procedure-rules/civil](https://www.justice.gov.uk/courts/procedure-rules/civil)

<sup>4</sup> rr6.3(d) and 6.20(1)(d) CPR; CPR PD 6A, para 4

