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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4. Defending a money claim

The defence and counterclaim form

Form N9B allows the client to explain the circumstances and facts of any dispute, which should be stated clearly and in sufficient detail. A defence should be submitted where there is one – eg, if the debt has already been paid. If the client cannot afford to pay the debt, this is not a defence, and the client should follow the admission procedure described on here–here.

A counterclaim can be made if the client has lost money because the creditor has failed to carry out its legal obligations, although a court fee is payable (unless the client can get remission – see here).

Form N9B should be returned to court within 14 days of service of the particulars of claim. If the particulars of claim are served with the claim form (as is usually the case), the date of service is the date the claim form is deemed to have been served (see here). If a defence cannot be prepared within this time, the client should return the acknowledgement of service (Form N9) to the court. They automatically then have a further 14 days to file a defence – ie, 28 days from the date of service of the claim form/particulars of claim. The client may need specialist consumer or legal advice before completing Form N9B.

If some of the claim is admitted and time is required to pay that amount, but some is disputed, both Forms N9A and N9B should be completed and returned to court. **Note:** these should *not* be sent to the creditor.

Challenging the creditor's costs

The pre-action conduct practice direction (see here) imposes a general obligation on creditors to act reasonably in negotiations and avoid unnecessary court action. If this has not been complied with, the creditor's costs can be challenged. [1] The client must show that:

- they have made reasonable attempts to avoid court action; *and*
- issuing proceedings was not a proportionate response by the creditor to the client's attempt to settle the matter.

Examples of when this might be successfully argued include if:

- the client has made a payment arrangement with the creditor before proceedings were started and has complied strictly with it;
- the client has made what you regard as a reasonable payment offer, but the creditor has unreasonably demanded higher payments – eg, other creditors have accepted offers made on the same basis and the creditor is unable to demonstrate where any additional payments

are to come from;

- the creditor has not warned the client (as required by the debt pre-action protocol - see here) that it intends to take court action by sending a 'letter of claim' (also called a 'letter before action'), setting out details of the debt and warning the client that, unless payment is made within a stated period (eg, 30 days), court action will be taken without further notice; [2]
- the creditor has acted unreasonably – eg, refused to negotiate or breached a code of conduct.

The court is required to take account of the conduct of both parties (including whether a party failed to comply with an order for alternative dispute resolution or unreasonably failed to engage in alternative dispute resolution (see here)) and also to assess the reasonableness of any offer made.

Beware of substituting what you consider reasonable for what a district judge is likely to consider reasonable, as the client must pay any additional costs incurred. As a general rule, district judges do not consider it unreasonable for a creditor to seek a judgment the client appears unable to pay. On the other hand, the district judge may consider it unreasonable for a creditor to refuse an offer of payment, issue proceedings and then accept the same offer made on Form N9A.

Just because the creditor has failed to comply with the pre-action protocol letter, the court may not necessarily deprive the creditor of its costs. The protocol says that the court 'will consider whether all parties have complied in substance with the terms of the protocol and is not likely to be concerned with minor or technical infringements, especially when the matter is urgent'. If the court decides the default has made no difference to the client's position, it will unlikely deprive the creditor of its costs.

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1 See also r1 CPR (the 'overriding objective')

2 *Phoenix Finance Ltd v Federation Internationale de l'Automobile, The Times*, 27 June 2002

Allocating the case to the appropriate track

The tracks

Defended cases in the county court are allocated to a 'track' (see here). This determines the way the case in managed by the court. If the client disputes the debt on grounds other than that it was paid before the claim was issued and the claim is a 'money claim', a court officer sends both

parties a notice of proposed allocation on Form N149A (small claims track), N149B (fast track) or N149C (multi-track). [1]

The notice of proposed allocation also requires the parties to complete a 'directions questionnaire' on Form N180 (small claims) or Form N181 (fast track, intermediate track and multi-track). Unrepresented parties are served with the appropriate directions questionnaire by the court. Other parties must download the appropriate form from hmctsformfinder.justice.gov.uk.

The completed questionnaire must be returned to the court within 14 days (small claims) or 28 days (fast track, intermediate track and multi-track). No fee is payable. It is very important that the client returns the completed directions questionnaire to the court within the time specified. If either party to a money-only claim fails to return the completed directions questionnaire on time, the court serves them with a further notice, giving them seven days within which to comply. If they fails to do so again, their claim or defence is struck out (ie, deleted), allowing the other party to ask for judgment unopposed. [2]

On receipt of the completed questionnaire, the case is automatically sent to the client's home court. This court:

- allocates the case to a track (see here); *or*
- sets a hearing date to consider allocation; *or*
- makes an order on the future conduct of the case ('case management directions'); *or*
- summarily disposes of the case (see here); *or*
- if requested on the questionnaire by both parties, suspends further action for up to one month to enable the parties to try to settle the matter.

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1 CPR PD 7B, para 5.3 sets out a different procedure for claims issued by the Business Centre: all defences are referred by the court to the creditor, which has 28 days to confirm whether or not it wishes to proceed. If so, the case is automatically sent to the client's home court. If there is no response, the claim is stayed.

2 r26.4 CPR

The tracks

The '**small claims track'** is the normal track for cases with a financial value of not more than £10,000. [1] On allocating the case, the court gives standard directions for its future conduct and fixes a hearing date at least 21 days ahead. The case is usually heard in private by a district judge.

Debt advisers can represent clients at the hearing. The court does not usually allow more than a day for the hearing, so cases likely to last longer may not be considered suitable for this track.

Even if the creditor wins the case, the client cannot be ordered to pay the creditor's costs (including the costs of any appeal) except: [2]

- the fixed solicitor's costs of issuing the claim;
- any court fees paid by the creditor;
- witness travel expenses or loss of earnings (not more than £95 a day);
- experts' fees, if any, not exceeding £750;
- costs to be paid by a party who has behaved unreasonably (see below).

The Court of Appeal has approved the following definition of 'unreasonable behaviour': [3]

Conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives [or litigants in person] would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's [or litigant in person's] judgement, but it is not unreasonable.

If the case is to be allocated to the small claims track, provided the parties agree to mediation in their directions questionnaire, the case is referred to the free HM Courts and Tribunals Service mediation service. **Note**: Since 22 May 2024, a two-year pilot scheme requires the parties to most new claims for a specified sum of money that are defended and allocated to the small claims track to go through a mandatory mediation process prior to any determination by a judge (see here).

The case is not sent to the client's home court until four weeks after the last directions questionnaire was filed, unless the court has been informed in the meantime that the case has been settled (in which case the claim is either stayed (ie, halted), discontinued (ie, withdrawn) or dismissed (ie, cancelled).

Small claims track decided without a hearing

CPR Practice Direction 51ZC – which came into force on 1 June 2022 and only applies to proceedings issued after that date – allows the court to decide that defended cases allocated to the 'small claims track' to be determined on paper – ie, without a hearing and without necessarily having the consent of the parties. This two-year pilot (which lasts until 31 October 2025 unless extended beyond that date) applies only to cases in the county courts at Cardiff, Bedford, Guildford, Luton and Manchester. Para 4 sets out the criteria and procedure for deciding whether a small claim is suitable for determination without a hearing. Para 4.4

contains a non-exhaustive list of examples, including:

– claims arising out of the issue of parking tickets on private land;

– claims of £1,000 or less where there is no factual dispute requiring oral evidence and the issues are not of such complexity as to require an oral hearing.

If the parties do not agree to the matter being determined without a hearing, the judge makes the decision. An amended N180 Directions Questionnaire has been introduced, requiring the parties to state whether they consider the claim is suitable for determination without a hearing and, if not, why not. Where claims are determined without a hearing, the judge must provide the parties with a 'note of reasons' (including why the judge decided the case was suitable for determination without a hearing). **Note:** as the list of examples in para 4.4 is non-exhaustive, it is possible that claims with a value in excess of £1,000 could find themselves determined without a hearing where they are considered suitable for disposal in this way.

The '**fast track'** is the normal track for cases with a financial value of no more than £25,000, which the court estimates can be heard in a day. [4] When a case is allocated to this track, the court must also assign the case to a 'complexity band' (see below). On allocating the case, the court gives case management directions and sets a timetable in which those steps are to be taken. At the same time, the court also fixes either a hearing date or a period within which the hearing will is to take place.

With effect from 1 October 2023, the **'intermediate track'** is the normal track for cases with a financial value of no more than £100,000, which the court estimates can be heard in no more than three days. [5] When a case is allocated to the fast or intermediate track, the court must also assign the case to a 'complexity band' numbered 1–4 which provides for an ascending scale of allowable costs commensurate with the complexity of the case. On allocating the case, the court gives directions for the management of the case and sets a timetable within which those steps are to be taken. At the same time, the court also fixes the trial date or a period within which the hearing will take place. The court also fixes a case management conference.

The '**multi-track**' is the normal track for all other cases – ie, cases with a higher financial value that cannot be heard in a day, or more complex cases requiring individual directions. [6] On allocating the case, the court either gives case management directions with a timetable in which those steps are to be taken (although no trial date or period is fixed) or fixes a hearing to consider the issues in the case and the required directions.

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1 CPR PD 27

2 r27.14 CPR

3 *Dammermann v Lanyon Bowdler* [2017] EWCA Civ 269

4 CPR PD 28 Parts I, II and III

5 CPR 28 Parts I and IV

6 CPR PD 29

Summary disposal

The court can deal with a defended case without holding a full hearing in certain circumstances. This is known as 'summary disposal'.

The court can 'strike out' (literally, delete) the particulars of a claim or defence if:

- no reasonable grounds are disclosed (eg, 'the money owed is £1,000' or 'I do not owe the money') for either bringing or defending the claim; *or*
- it is an abuse of the court's process – eg, if it raises issues which should have been dealt with in a previous case involving the same parties; *or*
- it is satisfied that a case either has no real prospects of success or is bound to succeed or fail on a point of law and there is no other compelling reason for the matter to go to trial. To have a 'realistic prospect of success' the case must be a convincing one and not merely arguable. 1

If there are significant factual issues between the parties, none of the above are appropriate.

The court can take this step on its own initiative or if one of the parties applies. Courts are now more proactive in this area than in the past, and you should therefore exercise great care when preparing defences and counterclaims. Defences that lack detail are likely to be struck out – ie, the defence must set out the relevant facts and reasons for disputing the claim.

If either the particulars of claim or defence are struck out, it cannot be relied on and the party cannot proceed. The court can then enter 'summary judgment' for the other party. 2

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1 *ED and F Man Liquid Products Ltd v Patel* [2003] EWCA Civ 472

2 CPR PD 3A and CPR 24