



# Debt Recovery & Litigation



## About MKB Law

Located on Belfast's Great Victoria Street, MKB Law are a full service law firm providing legal solutions to commercial and individual clients throughout Northern Ireland.

Our legal services cover a range of areas including: property, commercial & corporate, employment, family law, wills, personal injury claims, dispute resolution, litigation, debt recovery and financial services.

At MKB Law we strive for progress and innovation; ensuring that we adapt the ever-changing demands of both clients and the legal sector.



## Debt Recovery Overview

Our society is enormously dependent on financial credit. This means that the recovery process is often difficult. Being a debtor is no longer considered to be a shameful matter and is more readily accepted as a social circumstance. Those whose business it is to collect debts must however act as if such debt liabilities are in fact dishonourable and a slight against ones good character.

The balance of removing credit worthiness and the ability to obtain credit must be utilised to the creditor's greatest potential within the parameters of the recovery process.

The following pages detail the elements and processes of debt recovery. For more information, please contact our specialist debt recovery team: **028 9024 2450**

## Different Types of Debt Action

Letter before action, referred to as the seven day letter. Fees from: **£25 +vat**

## Enforcement of Judgments Office Search

This is used to ascertain a record of any Judgment lodged at the EJO within the last 6 years.

EJO Search: **£20**

## Small Claims - County Court - High Court - Insolvency

1. Small Claims Arbitration - County Court - High Court
2. Statutory Demand Insolvency
3. Mareva Injunction - High Court Application

It is adopted practise to send a seven day demand letter prior to commencing legal action.

Before instigating proceedings it is advisable to confirm the full name of the individual debtor or actual registered title of a corporate limited company.

## Choice of Court & Service of Process

### **1. Small Claims Arbitration Court**

For debts up to £3000, all documents are lodged with the Court Office who serve same by first class post or recorded delivery.

### **2. County Court**

For debts up to £30,000, Solicitors serve the Civil Bill Proceedings by first class post at the last known debtor address.

### **3. High Court**

This can be utilised for all level of debt and manner of action. Solicitors effect service of the High Court Writ by first class post at the last known debtor address.

## Default Judgment

An application for default Judgment is effective where the debtor has failed to either pay or compound with creditors or to dispute – defend the action.

Such application for default Judgment must be accompanied by a statement of truth in Small Claim matters, or by a sworn affidavit of debt in County or High Court actions, stipulating that the debt remains outstanding.

Fees from: **£350 +vat**

## After Judgment - Enforcement of Judgments Office

The EJO has extensive powers. They may issue orders to attach earnings, direct instalment re-payments, charge land, seize goods and appoint receivers on third parties who may owe monies to the debtor. However the process can be slow and cumbersome requiring specific expertise.

It is advisable to seek as much information as possible with regard to the debtors' asset status prior to expending fees on the enforcement process.

Fees from: **£250 +vat**

## Statutory Demands / Insolvency Process

Statutory Demands are the first stage of the Insolvency process. Such demands do not require processing via the Court Office. The liquidated debt limit must exceed £5000 for individuals but only £750 for company liabilities.

The documentation is drafted by the creditor's Solicitor and brought to the attention of the debtor directly. Personal service can be affected as necessary.

Fees from: **£250 +vat**

## Forms of Statutory Demand

### 1. Individual Debtors

The format will vary subject to whether the creditor holds a Judgment or not. The application is made under the Insolvency Order (NI) 1991 and must be for a liquidated amount.

### 2. The Limited Company – Corporate Debtor

The Statutory Demand is applicable when the Company is unable to pay its debts and should therefore be wound up by the Court and placed into liquidation.

### 3. Partnerships

The Statutory Demand is applicable when the entity is unable to pay its debts and should therefore be wound up by the Court and placed into liquidation.

## Service & Time Limits

Normally service is personal to the Debtor individual or corporate entity. Substituted service may be affected by delivering same to the last known residential address or to a corporate registered office. It may also be subject to advertising in the local press.

Thereafter the debtor has 21 days to pay, secure or compound for payment of the liability and only 18 days upon which to apply to the Court, without penalty of Court stamp fees, for the demand to be set aside on grounds of irregularity or otherwise.

## Petition for Bankruptcy or Company Insolvency

This follows the expiration of a Statutory Demand, drafted by the creditor's solicitor and must be personally served. In the case of a registered company the Petition must also be advertised.

It is considered to be a class action, and in the event of failure to pay, secure or compound, must be processed to conclusion with the debtor's adjudication in bankruptcy or company liquidation.

Fees from: **£950 +vat**

## Choice of Insolvency or Judgment Action

### **Points in favour of Insolvency Statutory Demand**

1. It is an efficient, quick method to obtain an early insolvency hearing
2. An inexpensive process to issue and serve
3. Imposes pressure on debtor to prioritise payment or to compound with the creditor
4. The creditor may revert to judgment route if no payment derived from Statutory Demand
5. The process may open prior fraudulent transactions and the commencement of misfeasance proceedings against debtors
6. Any subsequent Petition is a matter of public record and may be advertised
7. Any EU foreign assets are currently subject to all Northern Ireland Insolvency Orders

### **Disadvantages**

1. It can prompt an Insolvency Voluntary Arrangement by a moratorium of creditors
2. Secured creditor's may hold a priority status
3. Petition insolvency costs must be agreed with the debtor or taxed by a Master of the Court

### **Points in favour of Judgment Action**

1. It is the normal avenue to resolve disputes or to capture assets
2. The seven day letter may prompt repayment
3. Judgment action may capture payment in advance of other creditors
4. A registered Court Judgement will be recorded by the credit reference agencies

### **Disadvantages**

1. Costs may be wasted if other creditors gain a priority footing
2. The process may be time consuming and expensive. Debtors can challenge action after issue of Judgments which remain subject to applications for set aside

## When Bankruptcy / Insolvency Does Not Apply

### A Statutory Demand is not to be used when:

1. The claim is for damages and unliquidated
2. The debtor has a substantive dispute or reasonable triable issue
3. The undisputed liability is less than £5000 for an individual or £750 for a corporate company
4. Reasonable proposals for settlement have been proffered
5. Mareva Injunction is immediately required to protect against the dissipation of assets. This applies when the removal of assets is imminent, the debtor is about to flee the jurisdiction or in the process of dissipating assets. The Court must be satisfied by sworn credible evidence before it grants the Injunction and only after the issue of proceedings.

Fees from: **£5000 +vat**

## Uplift & Repossession of Goods

The foregoing Small Claim, County & High Court processes are implemented with a specific application to recover goods. This may be subject to an express retention of title contractual clause or on the basis that title has passed upon payment for the goods. This is a default process but is liable to challenge and defence by the debtor or any party claiming title in the goods.

Fees from: **£500 +vat**

## Debtors Outside the Jurisdiction & Judgment Action

Judgment matters subject to the Civil Jurisdiction & Judgment Act can be registered for enforcement in foreign countries. Should a debtor abscond to a compliant jurisdiction, the NI Judgment can be recorded as a Certificate of Money Provisions or European Enforcement Order within the target domain. Likewise foreign Judgments may be registered within Northern Ireland and all recovery processes utilised. It is unknown what effect Brexit will have on this process.

Fees from: **£500 +vat**



14 - 18 Great Victoria Street, Belfast, Co.Antrim, BT2 7BA

T: 028 9024 2450 E: [info@mkblaw.co.uk](mailto:info@mkblaw.co.uk)

[mkblaw.co.uk](http://mkblaw.co.uk)

*Copyright © MKB Law 2017. Subject to Terms & Conditions. All information is correct at time of print.*