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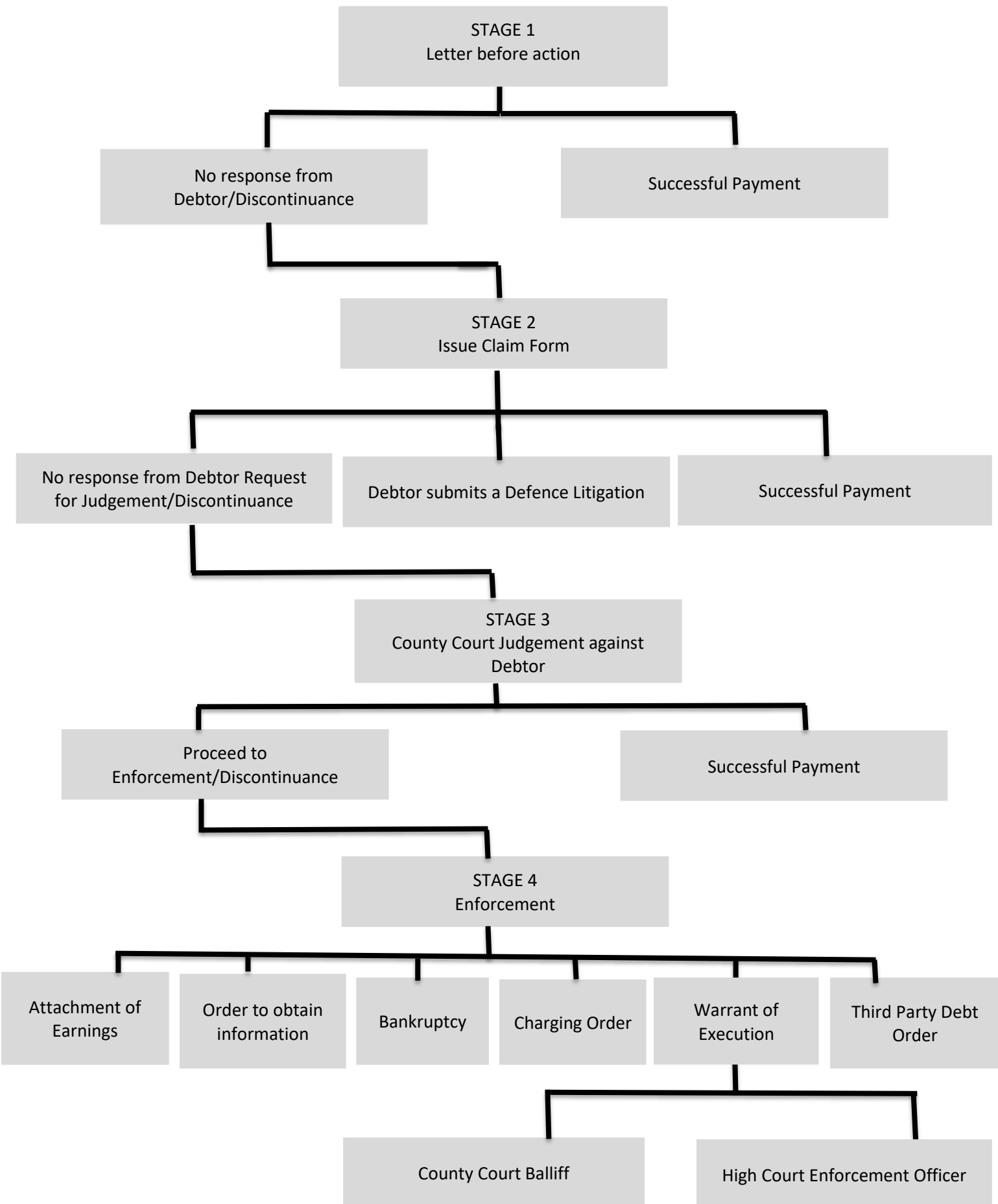
solicitors  
Incorporating Varley Hibbs

## Debt Recovery

*A Guide to the Debt Recovery Process*



## How does Debt Recovery work?



Unpaid debts can be a heavy drain on your resources. The task of chasing payment can often be a time consuming and frustrating process particularly if you are not familiar with the procedures involved.

Initially we will send a letter stating that if we do not receive the full amount within 7 days, court proceedings will be commenced. We often find that a solicitor's letter will often prompt a debtor to make payment.

Dependent on the particular debt, you may also ask us to make telephone calls or carry out research to obtain further information about the debtor's circumstances.

If it is necessary to issue court proceedings to recover the debt, the court will allow the debtor a period of 14 days to respond to any claim. Should the debtor fail to respond we will then be able to request a judgment by default. Once a judgment has been obtained it will remain on the court record for 6 years, (providing payment is not received within 28 days) and a creditor would be able to enforce the judgment to obtain payment within that time.

We will keep you fully informed as to the progress of the matter and advising you as to the options open to you at every stage.

### **How much will it cost?**

Throwing good money after bad makes little sense so we are here to assist you in balancing the impact of debts against the cost of recovery.

In order to reduce costs for you, we are able to handle undefended debts on our fixed fee scale so you know exactly how much your costs are at every stage. Our fixed fee charges cover all work undertaken on your behalf in accordance with your instructions provided the claim is not defended. This includes all

communications with both yourself and the debtor.

When issuing proceedings, it is possible to claim both the court fee and solicitor's costs which are fixed by the court. Therefore, if court proceedings are necessary, you will recover the majority of your costs incurred if the amount claimed is recovered in full. If court proceedings are unsuccessful and you choose not to proceed any further, a reduced fee will apply.

If the claim becomes defended and you continue to instruct us to pursue court proceedings on your behalf, we will discuss with you how our charges are calculated and we will give you an estimate of the likely costs which you might incur.

## **Enforcement Options**

### **Warrant of Execution - Sheriff Action**

This is usually the first method of enforcement tried by most Judgment creditors. It is the least costly and usually the quickest process to put into action.

A Warrant of Execution can be issued without a court hearing. If the debt is below £5,000 you must instruct the County Court Bailiff.

However, if the debt is over £600 but below £5,000 you have the option of whether to instruct the Bailiff or the High Court Enforcement Officer (HCEO). The Bailiff or the HCEO will attend at the debtors' address to seize goods belonging to the debtors for sale.

The court fee payable to issue the Warrant of Execution to instruct the Bailiff is £100.00 which will be added to the debt.

The court fee for issuing a Writ of Fi Fa to enable you to instruct the HCEO is £60.00 and the HCEO will usually recover their own costs from the debtor.

However, if they are unsuccessful there will be an abortive fee of £75 plus VAT. You are only entitled to recover £ 111.75 from the debtor in respect of the court fee and costs.

Some property is exempt from execution such as trade tools, essential household equipment and only property belonging to the debtors outright can be taken. The arrival of the HCEO or Bailiff at the debtor's home is however a powerful indication of the creditor's ability and intention to enforce payment and can often result in an offer of payment being made.

### **Charging Order**

Once a county court judgment has been obtained, we can apply to the court for a Charging order. The Charging order represents long-term security for the debt.

The idea is that when the property is eventually sold by the debtor or ultimately on their death, the debt is paid from the proceeds of sale.

There needs to be sufficient equity in the property to cover the debt. There is a court hearing and to include the cost of attendance at court, our fees are likely to be in the region of £350.00 plus VAT to obtain and register a Charging order, there are also fees due to the Land Registry and the court. However approximately £260.00 will be added to the Judgment.

### **Third Party Debt Order**

If a debtor is owed money by a third party, most commonly a Bank or Building Society account which is in credit, it is possible to obtain an order from the court directing that third party to pay the debt from the monies which they are holding.

In order for this method of enforcement to be pursued, it is necessary to have details of the

third party and the debt that is owed, usually bank account details.

In the case of a bank account, the account must be in credit at the time the application is made to the court. The process is in two stages. First of all the court issues an order freezing the assets in the bank account and secondly there is a court hearing at which the court decides whether to order payment by the third party to the creditor.

The debtor is unaware of the application until after the bank account has been frozen which prevents him from withdrawing all their money from the bank account to avoid enforcement. The court fee is £100.00 and our costs are likely to be in the region of £300.00 plus VAT.

### **Attachment of Earnings (Debtors as employees)**

If the debtor is in salaried employment it is possible to obtain an order from the court directing his/her employer to pay a certain amount of their wages to you. This is subject to a minimum protected earnings level therefore; it could take some time for the full amount to be paid.

However, it is an effective method and does not usually require a court hearing. It is necessary to know the details of the debtors' job and employer. The court fee is £100.00 and our costs in obtaining and dealing with an Attachment of Earnings order are likely to be in the region of £300.00 plus VAT. The court fee is added to the debt.

### **Statutory Demand and/or Bankruptcy**

This is not strictly a method of enforcement, but is an act of last resort if the debtor is unable or unwilling to pay their debt. Our costs in preparing and arranging service of the statutory demand is likely to be in the region of £250 plus VAT. The Demand should be served personally and the process server's fees are in

the region of £90 plus VAT. If the debtor fails to pay within 21 days of service and has not applied to set aside the statutory demand, you can present a bankruptcy petition.

By serving the statutory demand you are not obliged then to present a bankruptcy petition - you can decide whether or not to proceed in that way. It can often be used as an effective threat to obtain payment. We can arrange personal service of a statutory demand which will force the debtor either to pay or to apply to set aside the demand.

The cost of bankruptcy proceedings is quite high, not least because the court fee and Official Receiver's deposit total £1,880. Including our fees, the overall costs involved in applying for and obtaining a bankruptcy order is likely to be in the region of £2,000 plus VAT and disbursements but could be greater if the presentation of a petition or the making of a bankruptcy order are opposed. There is no advantage to being the petitioning creditor in a Bankruptcy, you will rank equally with all other ordinary unsecured creditors and will only receive a share of what is available from the debtor's assets after any secured or preferential creditors have been paid in full. Unless the debtors have substantial assets it is unlikely that there would be much, if anything, available to pay unsecured creditors and, therefore, bankruptcy is not a realistic option unless you wish to pursue it as a point of principle.

#### **Order to obtain information from the debtor (Oral Examination)**

Deciding what method of enforcement to pursue depends very much on the information available i.e. is the debtor employed, own property etc. It is possible to obtain an order from the court requiring the debtor to give sworn evidence of their income and assets. If the debtor refuses to comply, they could be committed to prison. Accordingly, the information is usually obtained eventually

however, a shrewd debtor could of course immediately dispose of assets or otherwise change their circumstances straight away after they have given the sworn evidence of their financial circumstances. The court fee for an oral examination is £50.00 and unless there were any unusual circumstances, it would not be necessary for us to attend the hearing of the examination, but we would simply receive the information once given. Our costs (in addition to the court fee) are likely to be in the region of £150.00 plus VAT. However, the order to attend court has to be personally served on the debtors for which there will be a process server fee of approximately £90.00.

**For further information, please contact our litigation department via [AGM@bandhattonbutton.com](mailto:AGM@bandhattonbutton.com) or call 024 7663 2121.**

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