

PRIVATE CLIENTS, SMES,  
DIRECTORS & SHAREHOLDERS

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# Summary of litigation and enforcement options



## Summary of litigation options

**We are often asked by our clients what the appropriate procedure is for collecting unpaid invoices when it becomes clear that a particular customer refuses (for whatever reason) to pay an overdue debt.**

There are two main ways in which to collect debts in this country.

One is using what may be termed “insolvency” based recovery routes. The other is using the more “traditional” recovery routes. There are advantages and disadvantages to both, although if it is possible to use it, the insolvency recovery route often provides the quickest and most cost effective means of recovery. However, the insolvency route should only ever be used in cases where there is no genuine dispute between you and your customer as to the performance of the contract itself and the debt in question must be over £750.

Set out below is more detail regarding the insolvency and traditional recovery routes.

To summarise:

- 1. Insolvency routes consist of statutory demands, bankruptcy petitions and winding up petitions.**
- 2. Traditional recovery routes consist of claims in the small claims court, the county court and the high court.**

# INSOLVENCY RECOVERY METHODS

## Statutory demands

### 1. What are they?

- Formal demands for payment under the Insolvency Act 1986. They are not court issued documents.

### 2. Who can they be used against?

- Both limited companies and individuals.

### 3. When can they be used?

- When the debt to be collected is £750 or more in respect of a limited company and when the debt to be collected from an individual (including a sole trader) is £5,000 or more.
- When the debt is overdue according to the payment terms between the parties.
- When there is no genuine dispute as to the underlying contract of supply.

### 4. How much do they cost?

- There is a process sever fee – commonly between £75 - £150.
- Solicitors costs – Please contact us to discuss fixed costs.

### 5. What is the next stage if the debt remains unpaid?

- Against a company you can issue a winding up petition.
- Against an individual you can issue a bankruptcy petition.

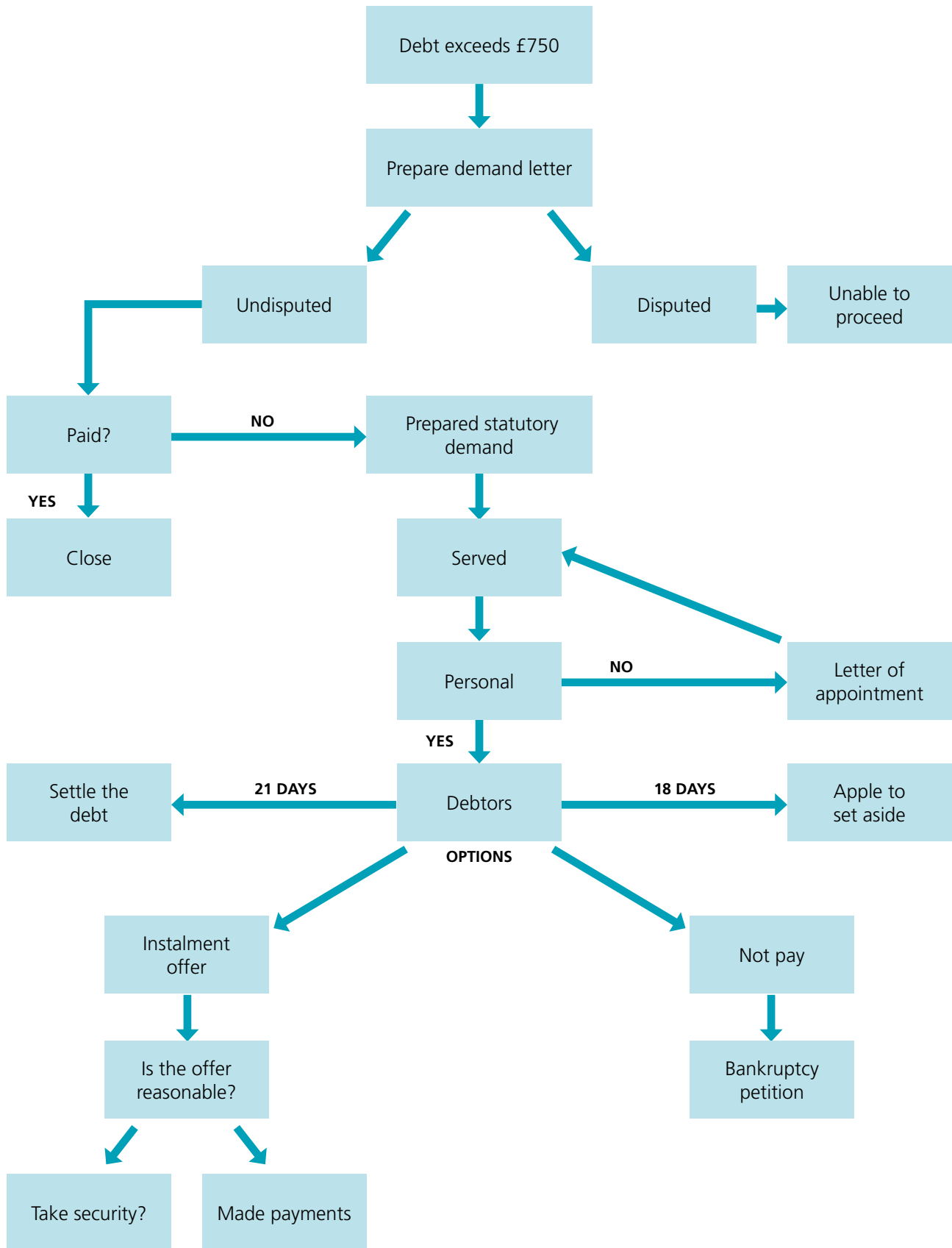
### 6. Advantages of a statutory demand

- Speed – if the debtor fails to pay within 21 days from the date of service, you can issue a winding up petition or bankruptcy petition as appropriate.
- Cost – is it generally a cheaper option than pursuing a claim through the traditional routes.
- Severity – it is a very strong threat to either a company or an individual. Failure to comply could result in the individual going bankrupt or the company being wound up.
- Even if the debt isn't paid in full, the use of a statutory demand normally results in settlement of the debt without prolonged litigation.

### 7. Disadvantages of a statutory demand

- Care needs to be taken to ensure that the debt is not disputed. If a demand is issued where there is a genuine dispute, it can be set aside by the court and you will be liable to pay the debtors legal costs which could be high.
- If the debt is paid in full, there is no legal right to get your costs paid (although we always try).

## Individuals, sole traders and partnerships statutory demands



## Bankruptcy petitions

### 1. What are they?

- Court issued documents which seek the bankruptcy of an individual for failure to pay an overdue debt.

### 2. Who can they be used against?

- Individuals only.

### 3. When can they be used?

- Following the failure by an individual to respond to a statutory demand, or the failure by an individual to successfully set aside a statutory demand.

### 4. How much do they cost to issue and serve?

- Process server fee – between £75 - £150.
- Court Fee – £280.
- Official receiver deposit – £990.00.
- Solicitors costs – Please contact us to discuss fixed costs.

### 5. What is the next stage if the debt remains unpaid?

- You can bankrupt the individual concerned at court and appoint a Trustee in Bankruptcy over his assets (whose role is to then sell any assets and distribute the proceeds to the creditors). A Trustee in Bankruptcy will collect in all assets of the bankrupt and make a distribution to creditors of pence in the pound.

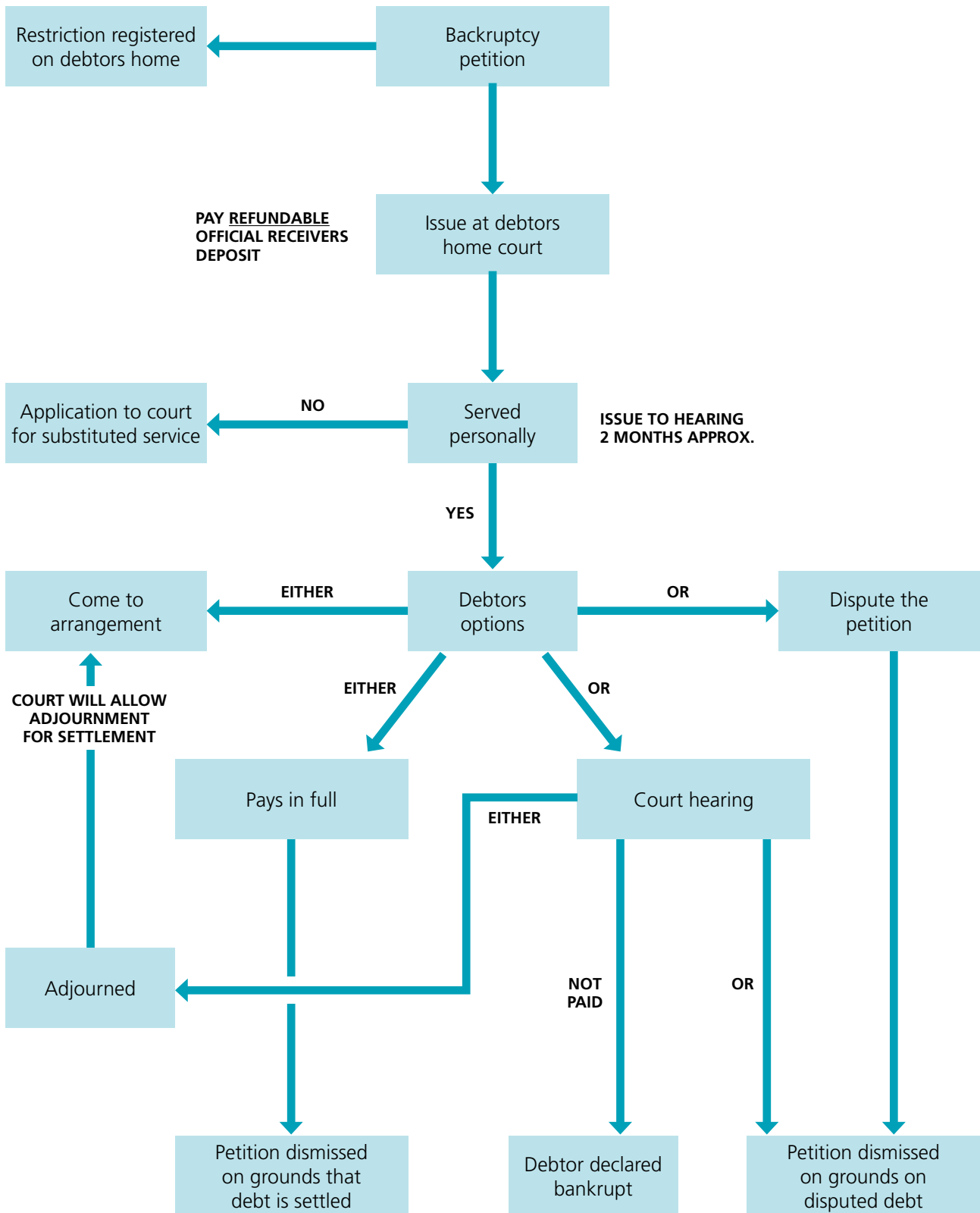
### 6. Advantages of a bankruptcy petition

- Threat – it is a very strong threat as failure to pay can end in bankruptcy.
- Cost – if the debt is paid following issue of a bankruptcy petition, you are generally entitled to recover all your legal costs from the debtor as well.
- Even if the debt isn't paid in full, the use of a bankruptcy petition normally results in settlement of the debt without prolonged litigation.
- It cuts straight to the issue of the ability of the debtor to pay the debt and avoids all the expense of traditional litigation processes first.

### 7. Disadvantages of a bankruptcy petition

- Failure to pay results in bankruptcy – and it is uncommon that a debtor then has sufficient assets to pay the creditors off.

# Bankruptcy petitions



## Winding up petitions

### 1. What are they?

- Court issued documents which seek the winding up of a company for failure to pay an overdue debt.

### 2. Who can they be used against?

- Companies only.

### 3. When can they be used?

- Any time a debt is overdue (but more commonly they are issued following the failure of a debtor to respond either to a letter of demand for payment or a statutory demand).

### 4. How much do they cost to issue and serve?

- Court Fee – £280.00.
- Official Receiver Deposit – £1,660.00 (of which £1,550 is refundable).
- Process Server Fee – £75 - £150.
- Company House Search Fee – £4.
- Solicitors Costs – Please contact us to discuss fixed costs.

### 5. What is the next stage if the debt remains unpaid?

- The debtor company can be wound up if you wish.

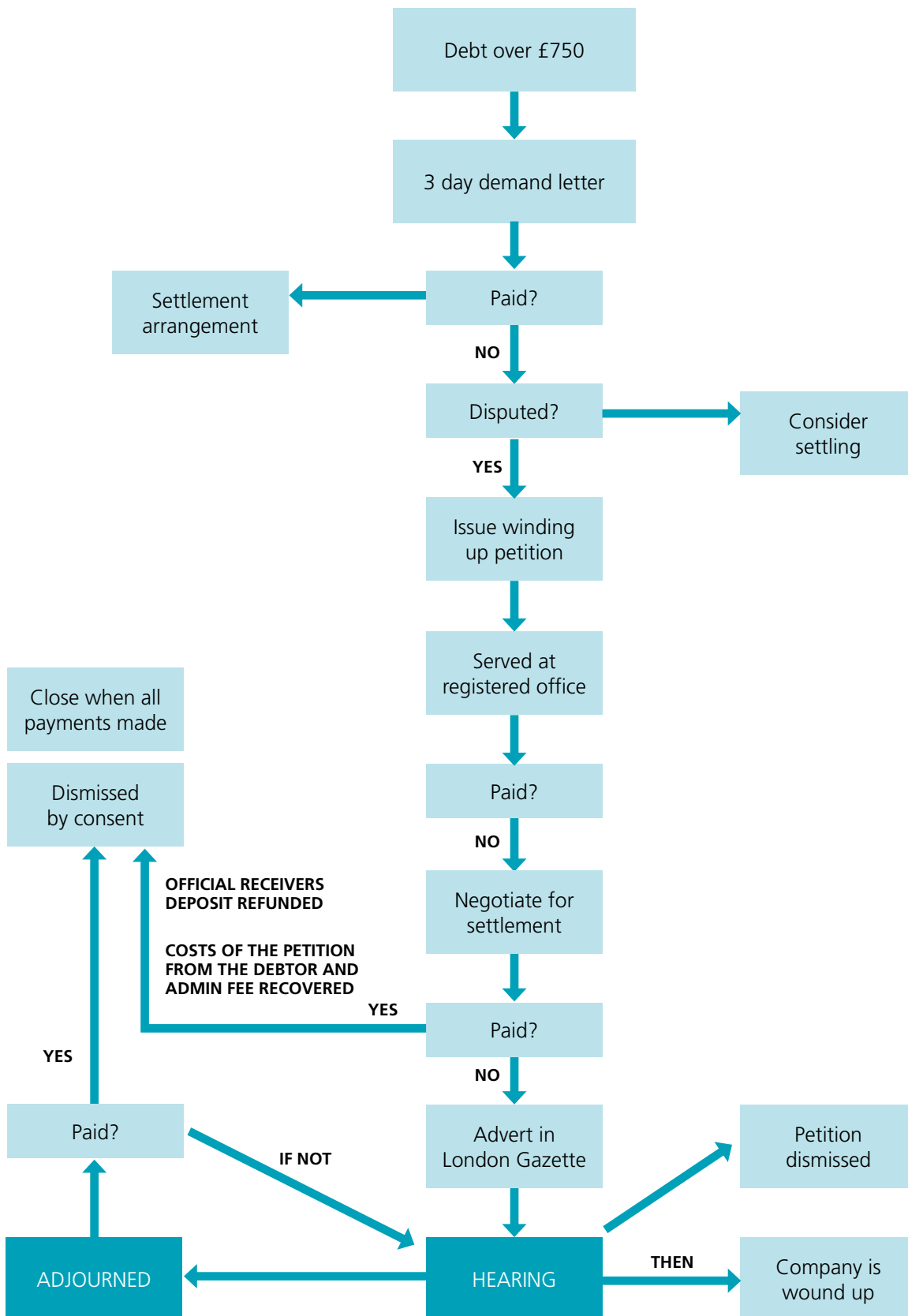
### 6. Advantages of a winding up petition

- Threat – it is a very strong threat as failure to pay can end in the debtor being wound up.
- Cost – if the debt is paid following issue of a winding up petition, you are generally entitled to recover all your legal costs from the debtor as well.
- Even if the debt isn't paid in full, the use of a bankruptcy petition normally results in settlement of the debt without prolonged litigation.
- It cuts straight to the issue of the ability of the debtor to pay the debt and avoids all the expense of traditional litigation processes first.

### 7. Disadvantages of a winding up petition

- If the company is wound up, the prospects of recovery are generally very low and you are only likely to receive a dividend payment of pence in the pound (but remember it is the threat of the consequences rather than following through which is vitally important).
- If the company is wound up, you do not get your court refund back of £1,165.
- If a petition is wrongly issued in circumstances where a debt is disputed, then you can get heavily penalised in costs.

## Winding up petitions



# TRADITIONAL RECOVERY ROUTES

## High court, county court and small claims court

### 1. Who can these types of claims be issued against?

- Companies and individuals.

### 2. When can they be used?

- Any time a debt is overdue and in cases where the debt is likely to be disputed.

### 3. How much do they cost to issue and serve?

- Court fee – various depending on value of claim.  
For up to date fees check <http://www.hmcourts-service.gov.uk/infoabout/fees/county.htm>

### 4. What are the different stages involved in a traditional claim?

- Claim form and particulars of claim – these are the documents which set out the basis of your claim against a defendant and they are issued at court and served on the defendant.
- Defence – this is the document the defendant files at court if it wishes to defend a claim.
- Counterclaim – this is where the defendant seeks to bring a claim against the claimant at the same time as serving its defence.
- Allocation questionnaire – this is an information document to be filled out by each party and filed at court for the benefit of the judge.
- Disclosure – this is a process whereby both parties to a claim list all the documents in their possession and exchange them with the other party.
- Witness statements – these are written statements which form the basis of the evidence you can give in court.
- Trial – this is the hearing at court following which judgment is given.

### 5. Advantages of traditional proceedings

- It allows a party the opportunity to provide detailed evidence in claims where there is a clear dispute between the parties.

### 6. Disadvantages of traditional proceedings

- Speed – claims can take 6-9 months to get to trial in a small claims claim (under £10,000), between 12 – 18months for a fast track claim (£10,000 - £25,000) and anything up to 24 months for a multi-track claim (over £25,000).
- Costs – it is expensive to run a claim to trial and even if you win, you will normally only be awarded approximately 70% of your legal costs for as multi-track claim.
- Recovery of costs is fixed for small claims track and fast track claims. This means that even if you win, the defendant does not have to pay your costs. Conversely, if you lose, you will not have to pay the defendant's costs.
- The credit worthiness of the debtor may deteriorate during the course of the proceedings.
- You still have to enforce any judgment awarded by the court at the end of a case if the defendant does not pay.

## Traditional county court and high court claims

These types of claims tend to follow a similar pattern. For the sake of clarity we set out the likely steps in an average litigation claim for you assuming it progressed to trial. It might be in certain cases that more unusual applications are required to suit a particular case (eg an application for summary judgment or specific disclosure) but these will be explained as and when the case requires it. Our costs for this type of work will be charged on an hourly basis as set out in our engagement letter.

Step	What is required	Estimate of length of time between each stage
1	Issuing claim form and drafting particulars of claim	
2	Examining defence (and counterclaim) if claim defended	33 days (from stage 1)
3	Drafting reply to defence and defence to counterclaim	14-28 days (from stage 2)
4	Completing allocation questionnaire	14 - 28 days (from stage 2 or 3)
5	Drafting and exchanging list of documents	4-6 weeks (from stage 4)
6	Reviewing other sides list of documents	7-14 days (from stage 5)
7	Drafting witness statements	8-12 weeks (from stage 6)
8	Reviewing other sides' witness statements	2-3 weeks (from stage 7)
9	Preparations for trial	10-12 weeks (from stage 8)
10	Trial	4 weeks (from stage 9)

It is always difficult to estimate the length of time a case may last in total as it is not known until a defence is served what issues might need to be dealt with, the number of witnesses who might need to be called. However, the above is a guideline for the amount of time which might elapse between each particular stage of a standard high court or county court claim.

## Standard county court and high court work

### Costs and fees on issuing legal proceedings\*:

Claim Amount From-to	Solicitors Costs £	Court Fee (Disbursement) £	Total £
1 - 300	100	35	135
300 - 500	100	50	150
500 - 1,000	100	70	170
1,000 - 1,500	100	80	180
1,500 - 3,000	100	115	215
3,000 - 5,000	150	205	355
5,000 - 10,000	250	455	705
10,000 - 50,000	350 - 650	5% of value of claim	
50,000 - 100,000	650 - 950	5% of value of claim	
100,000 - 150,000	950 - 1,500	5% of value of claim	
150,000 - 200,000	1,500 - 2,000	5% of value of claim	
200,000 - 250,000	2,000 - 2,500	10,000	12,000 - 12,500
250,000 - 300,000	2,500 - 3,000	10,000	12,500 - 13,000
300,000 - unlimited	On Application	10,000	

\*fees quoted are on the assumption that the debt claim is straightforward. Should it become evident that the matter is complex then we reserve the right to amend our fees above.

### Costs for entering Judgment:

Claim Amount From-to	Default of Acknowledgement £	Default of Defence £	On Admission £	After Determination £
25 - 5,000	22	25	40	55
5,000+	30	35	55	70

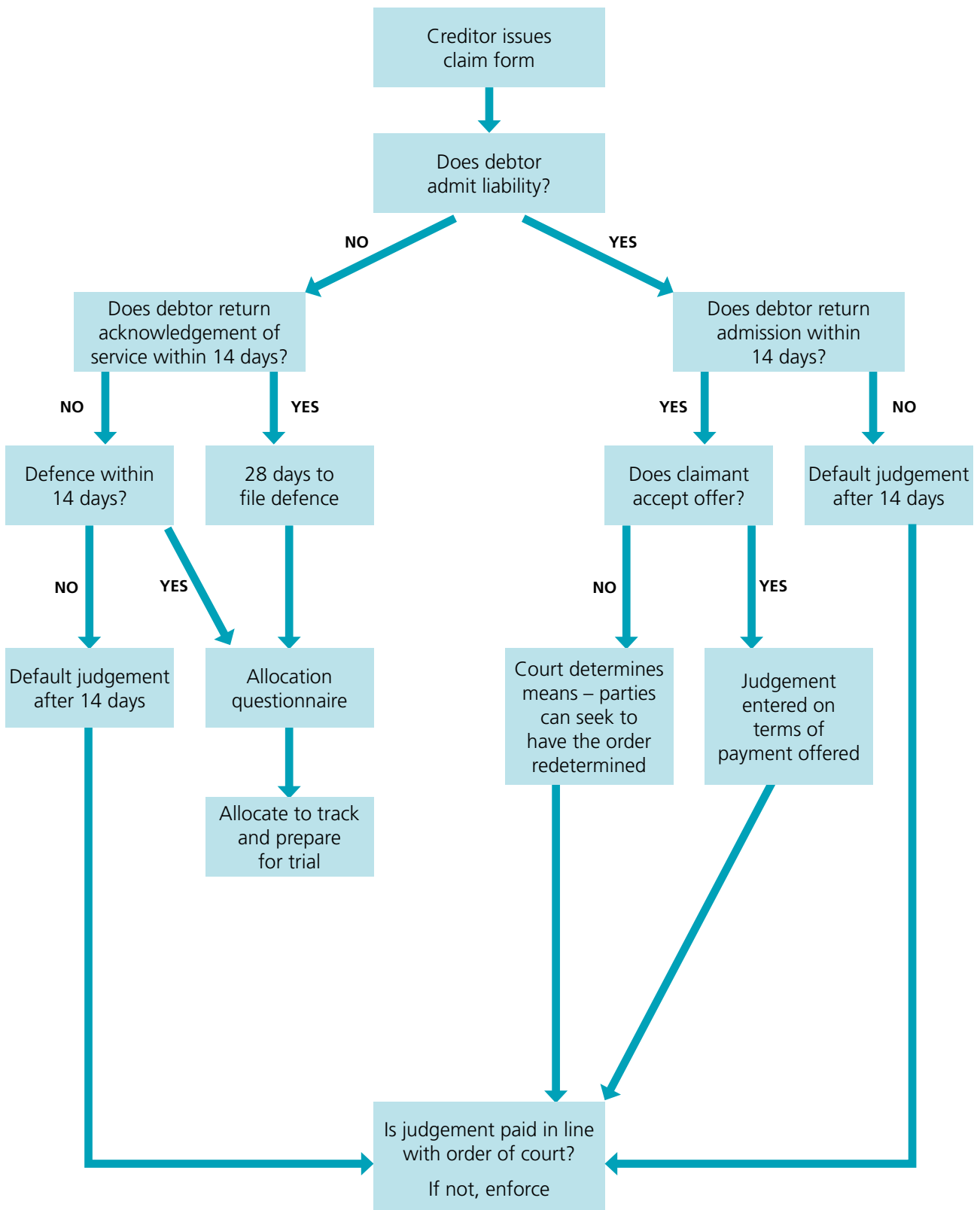
## County court bulk centre claims

### Costs and fees for issuing proceedings\*:

Claim Amount From-to	Solicitors Costs £	CCBC Court Fee (Disbursement) £	Total £
1 - 300	50	25	75
300 - 500	50	35	85
500 - 1,000	70	60	130
1,000 - 1,500	80	70	150
1,500 - 3,000	80	105	185
3,000 - 5,000	80	185	265
5,000 - 10,000	100	410	510
10,000 - 50,000	250	4.5% of the value of the claim	250 + 4.5% of the value of the claim
50,000 - 100,000	500	4.5% of the value of the claim	500 + 4.5% of the value of the claim

\*fees quoted are on the assumption that separate particulars of claim will not be served. Should separate particulars be required we will provide you the necessary fee quote for this

## Claim form – issue to judgment



# ENFORCEMENT OPTIONS

**Enforcement options** (after receiving judgement) – If the court has ordered your debtor to pay a sum of money and they have failed, you use one of the following five enforcement options.

1. **Warrant of execution**
2. **Information order**
3. **Charging order**
4. **Attachment of earnings**
5. **Third party debt order**

**Warrant of execution** – This is the most common method of enforcement. It is a request for the court bailiff to enter the debtors home or business premises to seize goods and chattels, which will then be sold to pay off the debt.

- **The county court bailiff enforces Judgements of less than £600.**
- **The high court enforcement officer (HCEO) enforces judgements of more than £5,000. A county court judgment of more than £600 can be transferred up, to the HCEO for enforcement.**
- **Either the county court bailiff or high court enforcement officer enforces judgements of between £600 and £5,000.**

We use high court enforcement specialists for all debts above £600. The HCEO is generally more effective than the bailiff as they operate on commission. Providing the HCEO collects in full the debtor will pay all their charges.

**Abortive costs** – Any failed attempt to execute by the HCEO holds an abortive charge. The industry standard is £75 plus VAT per visit, recoverable from the debtor.

**Help the HCEO/bailiff** – By providing as much contact information about the debtor together details of their valuables, property, vehicles and any other possessions that are possible located at a different address will help assist your case.

**Information order** – The judgment debtor is required to attend court for questioning under oath about their finances and company directors to give evidence about company assets. This can be useful but it is time consuming and the costs incurred are not recoverable.

**Charging order** – This enforcement method is used to create a legal interest on the debtors land or property. Any charge obtained will not take priority over existing charges, such as a mortgage. An “interim charging order” will initially be granted by the court, the charge is registered and the HM Land Registry and the debtor informed. On the basis that there are no objections filed then the court will award a final charging order. Should objections be filed then a hearing date will be allocated where the court will consider the objections and your response to those objections and whether or not a charging order should be made a “final charging order”. The debtor will be unable to sell land or property without first paying the creditor.

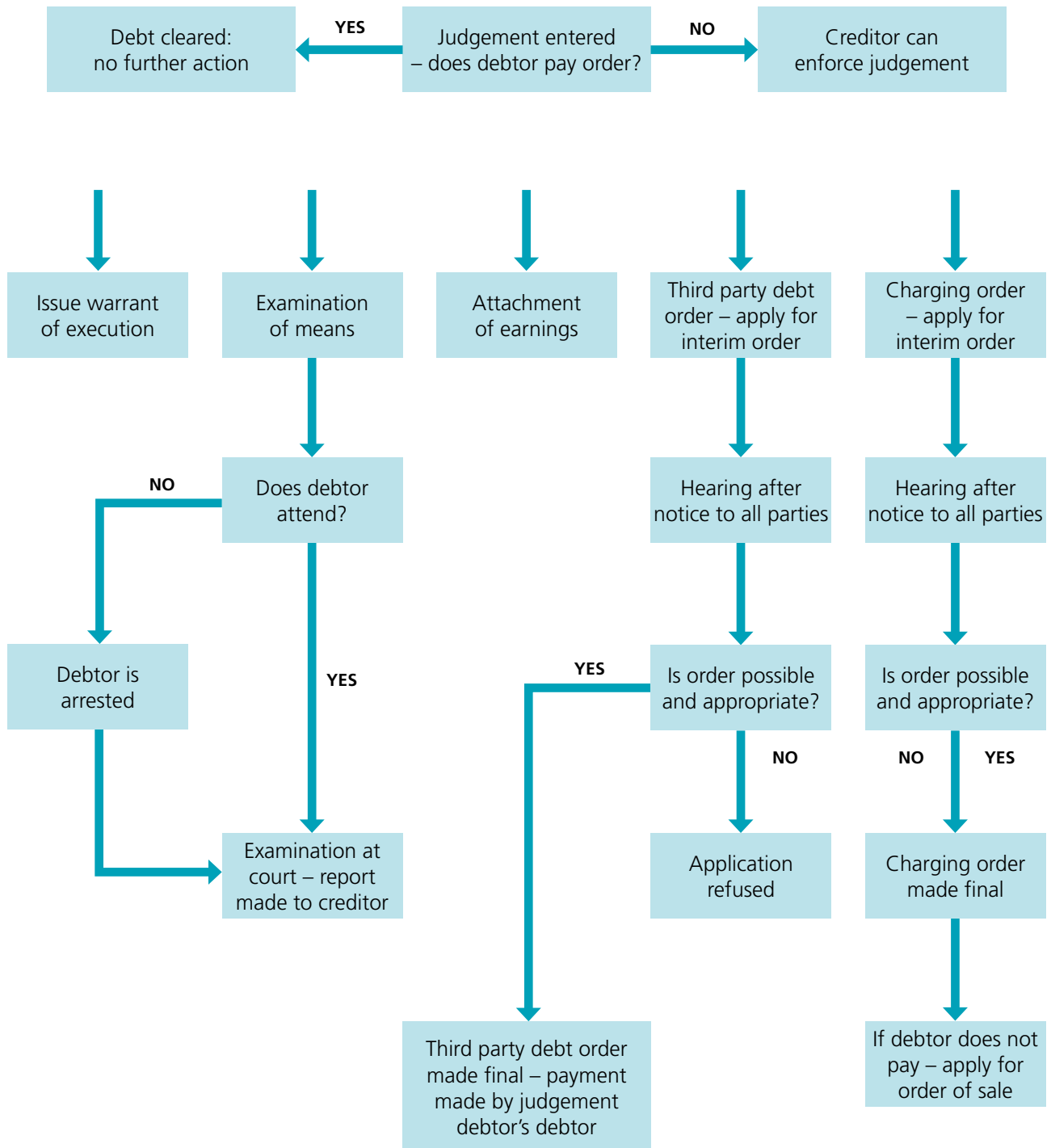
Once a charging order is held you can enforce it by an application to sell the property. Some creditors find applying for a charging order, rather than instructing the HCEO or bailiff encourages the debtor to pay quicker, as the debtor does not like the idea of having the charge registered against their property.

It is usually only worth taking this type of action where there is equity in the property i.e. the property is worth more than the amount already borrowed against it.

**Attachment of earnings** – The Attachment of Earnings Act allows the creditor to seek a court order for payment of part of the debtor's wages, served on the employer it allows for an amount calculated between a protected figure and the total earnings of the debtor. This is deducted weekly or monthly and paid direct to the court by the employer, this is then passed on to the creditor. It can be an expensive and un-effective if the employer does not pay or the debtor changes jobs. On a consolidated attachment of earnings order, for every £1, or part of a £1, of the money paid into court, a fee of 10p is deducted from the money before it is paid out to the creditors under the order.

**Third party debt order** – If money is owed to your debtor by a third party a court order can be obtained which requires that person or company to pay the money directly to you, this includes parties who are holding money on behalf of the debtor such as a building society or bank, any evidence of an account held by the debtor could be of use.

## Enforcement of judgment



## Talk to our team

- ✓ Speak in confidence
- ✓ No obligation
- ✓ Expert advice from a friendly team



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