

Debt Recovery Guide

SECTION A – A GUIDE TO GEBBIE & WILSON AND THE DEBT RECOVERY STAFF

SECTION B – PRIOR TO RAISING ACTION

SECTION C – RAISING ACTION

1. Warranting of Court Writ
2. Service of Court Writ
3. The Defended Action
4. Taking Decree

SECTION D – ENFORCEMENT

1. Charge
2. Attachment
3. Arrestments
4. Inhibition
5. Earnings Arrestments
6. Insolvency

SECTION E – HELPING US TO HELP YOU

SECTION F – OTHER SERVICES OFFERED BY GEBBIE & WILSON

SECTION A - A GUIDE TO GEBBIE & WILSON AND THE DEBT RECOVERY STAFF

History of our Firm

Founded in Strathaven in 1816, we are one of the longest established legal firms in Scotland, with a proud tradition of providing high quality legal services to each succeeding generation of the residents, business people and farmers of our town and the surrounding areas.

Gebbie & Wilson Today

As with the Accountancy World, much has changed in Legal Practice over recent years and, like you, we have moved with the times. We are now one of the largest stand alone Law Offices in Lanarkshire, having a team of 6 Solicitors, ably supported by 18 administrative and secretarial staff. Our clients – located throughout Scotland and beyond – range from Public Limited Companies, through family businesses, professional partnerships, farmers and sole traders to private clients and trusts.

Our Philosophy

Our aim is to combine the quality of legal work offered by city firms with the personal service associated with a country practice. The calibre and experience of our people, complimented by the relaxed, friendly atmosphere of our country town location, enable us to achieve this. Our philosophy can be summarised as:-

***PERSONAL SERVICE: PROFESSIONAL QUALITY: PEOPLE
COUNT
DEDICATED DEBT RECOVERY STAFF***

Partner

Jacqueline A. Fox, LLB, DipLP, NP. (Qualified in 1991): Jacqueline joined our firm in 1996 as our Court Specialist. Having completed her Traineeship in the insolvency and corporate departments of a major Glasgow firm, Jacqueline gained five years' sharp end experience in the Sheriff Courts of Glasgow and Lanarkshire as the Court Solicitor for a firm smaller than but similar to our own. Jacqueline became a partner at Gebbie & Wilson in 1999. Since Jacqueline joined our firm the debt recovery department has grown from strength to strength to such an extent that we have the largest debt recovery department of any solicitors firm in Lanarkshire.

Contact – jacqueline@gebbiewilson.co.uk

Paralegals

Linda Brown: A veteran of 34 years service with our firm, Linda was once a Secretary but her administrative duties expanded with our Debt Recovery Department and tenacious pursuit of our clients' debtors has long since become her full time job. Linda is now our Debt Recovery Manager

In undefended actions, her department deals with all the paperwork from warning letter to court Decree. The matter then returns to Linda and her team once decree is obtained when she deals with all aspects of diligence and payment.

Contact – linda@gebbiewilson.co.uk

Zara Younas: Zara has been with the firm since 2006 joining the Debt Recovery Department after a spell in the Conveyancing and Trust and Executry Departments. Zara deals with all aspects of undefended debt recovery actions and notices of potential liability together with insolvency work

Contact: zara@gebbiewilson.co.uk

Michelle Young: Michelle has returned to the firm after a career break during which she looked after her two young daughters. A welcome addition to the debt recovery team Michelle also deals with all aspects of undefended debt recovery actions.

Contact: myoung@gebbiewilson.co.uk

Margaret Barr: In principal Margaret is secretary to Jacqueline Fox and also deals with all aspects of defended debt recovery litigation in her day to day duties together with assisting Linda with the undefended actions. She has considerable experience in handling debt recovery issues of a varied nature.

Contact margaret@gebbiewilson.co.uk

SECTION B - PRIOR TO RAISING ACTION

1. Warning letter

As soon as we receive your instructions, we write to the Debtor*:-

- (i) requesting payment on your behalf,
- (ii) advising that all future correspondence regarding the debt should be addressed to us, and
- (iii) warning that if payment is not made within seven days, Court action will be taken.

*The warning letter is not essential - we can sue immediately if you prefer, however that can sometimes mean you will not be entitled to recover any costs from the debtor.

SECTION C - RAISING ACTION

1. Warranting of Court Writ

When we say seven days, we mean seven days. We think this is vital to preserve the credibility of both your Company and our Firm. If we have a response from the Debtor we will report to you and take your further instructions. If we hear nothing, we will prepare the Court Writ immediately on the expiry of the seven day period. The Court requires us to lodge copies of your Invoices along with the writ and so we would ask you to send us these before the expiry of the seven day warning period. The action is raised in the Sheriff Court nearest to the Debtor's premises or in certain circumstances nearest to your premises and, before serving the writ on the Debtor, we must send it to the Court for warranting. The writ is then returned to us along with the Warrant (the Court's authority to serve the writ on the Debtor).

2. Service of Court Writ

We then serve the Writ on the Debtor. This is done either by Recorded Delivery post or by personal delivery by Sheriff Officers (the Scottish equivalent of the English bailiffs). To save expense, we normally attempt a recorded delivery service first but if there is any urgency, a large debt involved or diligence we instruct Sheriff Officers at the outset. If the Debtor disputes your claim, she/he must notify the Court in writing within twenty one days.

There is a slightly different procedure for Small Claims and Summary Cause Actions – those under £3,000.00 and £5,000.00. When the writ is warranted, the court allocates a specific date, usually about six weeks

later (the Return Date), by which the Debtor must send a reply form to the Court if he intends to defend the action.

3. The Defended Action

Where there is a genuine dispute (and sometimes where the Debtor is simply stalling for time), a NID is lodged (see Section 2 above) and we are faced with a defended action. In actions over £5,000.00 (Ordinary actions), the Court fixes a timetable with the following dates:

- last day for lodging defences

- last day for adjustment

- Options Hearing

After the Defences are lodged both parties have usually around twelve weeks to adjust their written case prior to the Options Hearing. The Options Hearing is usually the first time a case has called in court. The purpose is for the court to ensure that the case is progressed as quickly as possible by ascertaining the matters in dispute. At the Options Hearing the case can either be continued for four weeks to a continued Options Hearing, or a debate, or a Proof before Answer or a Proof is fixed. The Proof is the formal Court hearing at which evidence is heard from witnesses for both parties and the Judge (called the "Sheriff") decides the case. Expenses are usually awarded against the losing party.

In Small Claims actions (under £3,000.00) if the Defender has returned a response to the Sheriff Court the case will call for a Preliminary Hearing. It is at this hearing that the Sheriff will ascertain the points in dispute and note the defence. A date for a full hearing will then be fixed by the court. The full hearing is similar to a Proof however parties can usually represent themselves.

There is a similar procedure in Summary Cause actions (over £3,000.00 but less than £5,000.00) but you must note that it is not always possible for parties to appear and represent themselves in these matters.

Defending an action is an effective ploy by a Debtor who doesn't really have a defence but wishes to play for time. However it is an expensive ploy: interest runs on the debt at 8% p.a. from the date we serve the Writ or Summons and expenses of a defended action are substantial – bearing in mind that the Debtor will end up, if unsuccessful, having to pay our costs as well as those of his/her own solicitors. For this reason, it is most unusual for debt actions to reach the stage of a Proof. Also bear in mind that interest can be higher if we can use the late payment legislation.

4. Taking Decree

If no reply form has been lodged with the Court 21 days after service of the action on the debtor, we immediately apply to the Court for Decree – which will automatically be granted. Decree is the Court Order which authorises us to enforce payment of your claim. An official copy of this Order – called the Extract Decree – is sent to us by the Court about three weeks after Decree is granted. Armed with the Extract Decree, we commence the enforcement procedure.

SECTION D - ENFORCEMENT

1. Charge

The first step is personal service (by Sheriff Officers) on the Debtor of a document known as a Charge. The Charge is the formal intimation to the Debtor that we hold a Decree on your behalf and that failure to make payment of the sum due (plus interest and expenses) will result in enforcement. The period of Charge is **fourteen days** and we must let it expire before taking further action. If the Charge expires without payment, we can proceed with an Attachment (see Section 2 below). Alternatively, since expiry of a Charge without payment is also evidence of the Debtor's apparent insolvency, we can take bankruptcy/liquidation action provided the debt is more than £1,500.00 (for Bankruptcy) or £750.00 (for Liquidation) (see Section 6 below).

2. Attachment

When our Sheriff Officer visits the Debtor's premises to serve the Charge, they will report back to us with a report to the value of any assets they see there. Accordingly, if the Charge expires without payment, we will already have some idea of how productive an attachment is likely to be. An Attachment is a further visit by the Sheriff Officers to the Debtor's premises, this time to take an inventory of goods up to the value of the debt, although furniture within the debtor's residence is exempt from attachment. Once attached, the goods cannot be moved: to do so is a criminal offence. Only goods belonging to the Debtor can be attached – not those on hire or belonging to third parties. If payment is still not made after the Attachment the Sheriffs Officers can arrange for an auction for the goods to be sold the date for which is approved by the Court.

3. Arrestments

Monies belonging to the Debtor can be arrested in the hands of third parties. The effect of an arrestment is that the party holding the monies cannot release them to either party without the written consent of the other. The most common form of arrestment is the Bank Arrestment – by which any monies in credit at the Debtor’s Bank Account is frozen. This can prove very effective since it can paralyse the Debtor’s business. However, if the Debtor is in overdraft or has no funds at credit on the particular day the arrestment is lodged, it will be unsuccessful. If an arrestment does attach funds but the Debtor refuses to allow them to be released to you we then obtain a further court order (known as a Decree of Furthcoming) for the release of the arrested funds.

4. Inhibition

An Inhibition is a preventive measure which can be taken against the Debtor’s land and buildings. The Inhibition is an extremely effective lever in a situation where the Debtor is in the process of selling/is about to sell any land or buildings because its effect is to stop the sale until the Inhibition is lifted. If your Debtor is a large Company or a property developer, an Inhibition should cause the desired havoc – but at the other end of the scale, an individual Debtor who has no intentions of selling or raising a mortgage over his property is not likely to be spurred into payment by this measure.

In certain circumstances it is possible to carry out an Inhibition or a Bank Arrestment before decree at the very commencement of the action if for example the debtor is dissipating assets or is likely to leave the

jurisdiction. If you have a case where you think this may apply you should discuss this with Jacqueline Fox.

5. Earnings Arrestments

After service of an Expired Charge an Earnings Arrestment can be served on a Debtor's employer. While an Earnings Arrestment is in force the employer must deduct a certain sum from the debtor's net earnings and pay this to the Creditor named on the Arrestment Schedule. This is obviously therefore a very valuable tool in debt recovery and if you are aware of your debtor's employer this information should be given to us at the earliest opportunity.

6. Insolvency Proceedings

Where the amount of the debt is more than £3,000.00 (for Bankruptcy) and £750.00 (for Liquidation), another range of measures which are often effective are Bankruptcy proceedings (against a Debtor who is an individual, sole trader or partnership) or Liquidation proceedings (against a Debtor which is a Limited Company). Before commencing such proceedings, we have to demonstrate to the Court that the Debtor is apparently insolvent. The usual way of doing this is to show that the Debtor has let a Charge expire without making payment.

The alternative, which can avoid prior Court action altogether, is to serve a Statutory Demand on the Debtor. This has to be served personally by Sheriff Officers and is a Notice, in prescribed statutory form, which warns the Debtor that he has twenty one days to respond to the Notice failing which you will be entitled to take bankruptcy/liquidation proceedings against the Debtor. Such a Notice will sometimes jolt the Debtor to making payment but if not, all the Debtor has to do to avoid further action under it is to write back to us denying the debt.

Practically all individuals wish to avoid being declared bankrupt and most Companies wish to avoid Liquidation. In particular if the debtor has any assets at all such proceedings will often stimulate payment where all other efforts have failed

SECTION E - HELPING US HELP YOU

~ The sooner you instruct us the better chance we have of recovering your money – quickly and in full. We appreciate that there will often be a thin dividing line between a good customer who is being a bit slow in paying and a bad one who has no intention of paying. You will want to deal with the ‘Can Pay, Will Pay’ category yourself. But a warning letter from us will often bring the ‘Can Pay, Will Pays’ into line – and the sooner you find out who are the ‘Can’t Pay, Wont Pays’ the more chance you have of enforcing payment before they go bust (as they almost inevitably will).

~ Remember too that the longer you give a customer to pay, the more interest free credit you are allowing him. As soon as you raise Court action, interest starts to run in your favour at 8% p.a. So, particularly for larger debts, it will often be a good idea to raise the action even if you are willing to allow the customer time to pay. You will place yourself in a much stronger bargaining position by doing so – and the fact that interest is running on the outstanding balance will give the customer a real incentive to pay.

~ Please be sure you know who you are dealing with. Is your customer an individual, a partnership or a limited company? If an individual, what their name (including first name) and address (trading and home)? This applies equally to a sole trader or partnership using a trading name: to enforce payment against the owners of the business, you have to know their names and addresses. With limited companies, the important thing is to know the exact name of the company: if we sue a company under an

even slightly wrong name, our action will fail at the enforcement stage.

~ The first/next time you receive a cheque from a customer, take a note of the bank details and keep them on file. Then, if you ever have to sue them, you will know exactly where to lodge a Bank Arrestment. Similarly, if you can give us details of any third party who owes your debtor money, we can arrest in their hands.

OTHER SERVICES OFFERED BY GEBBIE AND WILSON

CONVEYANCING – DOMESTIC AND COMMERCIAL

All of our Solicitors – apart from our Court Specialists – are engaged in property work on a daily basis. Among us we have a wealth of experience in House Purchase and Sale, Commercial and Agricultural Conveyancing and Commercial Leasing.

PRIVATE CLIENT

Wills, Trusts and Executry Administration and Inheritance Tax Planning form a significant part of our work.

We believe that, with few exceptions, everyone should have a Will. Even if – as is often not the case – the Law of Intestacy would reflect your wishes, having a Will allows the winding up of an estate to be carried out more quickly and at less expense.

Contact: david@gebbiewilson.co.uk

ESTATE AGENCY

We are founder members of **Glasgow Solicitors Property Centre (GSPC)** and are currently marketing a sizeable number of homes and businesses for our clients. While we continue to specialise in properties in Lanarkshire, our access to the GSPC network of some 200 Solicitors' offices throughout Glasgow and Lanarkshire has enabled us to considerably widen our estate agency catchment area. Indeed, our GSPC membership lets us market properties for our clients via any of the Solicitors Property Centres throughout the country.

Contact: property@gebbiewilson.co.uk

WHERE CAN YOU FIND US?

Location

We are fortunate that our picturesque market town of Strathaven provides a most agreeable working environment and yet, being equidistant between East Kilbride and Hamilton, is within easy travelling distance of everywhere in the Central Belt.

...

If we can help you or any of your staff in any of the areas referred to above we will be delighted to do so. Simply call **Jacqueline Fox** – or indeed any of our team of Solicitors on:

(01357) 520082

or e-mail jacqueline@gebbiewilson.co.uk

REMEMBER WE DO NOT CHARGE COMMISSION ON ANY DEBT RECOVERY CASES.

If we can improve our service to you...

The same applies. We will welcome your suggestions.

Visit our Website at
www.gebbiewilson.co.uk

SCALE OF COSTS (2008)
UP TO OBTAINING DECREE ONLY (UNDEFENDED ACTIONS)

CASES:-

Between £200 and £1,500.00	£150.00
From £1,501 to £3,000	From £250.00 to a maximum of 10% of the sum claimed
From £3,001 to £5,000	£425.00
From £5,001 to £15,000	£610.00
£15,001 and upwards	5% of principal sum

In addition to the fees as outlays above you will also be liable for any outlays which refer to the undefended actions.

DEFENDED ACTIONS

Defended actions are charged on a time and line basis and interim fees will be issued to keep you aware of the costs. On conclusion of the action if your claim is successful decree with expenses will be granted for defended actions which should cover a substantial amount of any fees submitted.

PLEASE NOTE WHERE YOU ARE SUCCESSFUL AND RECEIVE INTEREST AND EXPENSES THESE ARE DEDUCTED FROM OUR FEE NOTE.

PLEASE ALSO NOTE WHEN YOU ARE UNSUCCESSFUL WITH AN ACTION WE ALWAYS SEND YOU A RESTRICTED FEE NOTE