



## WHAT HAPPENS WHEN A CREDITOR TAKES COURT ACTION AGAINST YOU?

### What is a court action?

If you are in debt and your creditor decides to take legal steps to enforce the debt, you may find that a court action is raised against you. This will be a civil action for payment, which means that you cannot go to prison for owing the debt.

In most cases there is no dispute over the amount owed to the creditor. If you do dispute the debt and if you think that you have a defence, do not ignore the court document: get advice immediately from a legal aid solicitor, law centre, CAB or **phone us for advice**.

In Scotland, the person or company raising the action is called the **'pursuer'**.

The person being sued is called the **'defender'**.

### Which court am I dealing with?

In Scotland, there are two courts in which debt actions are raised:

- 'sheriff court'; and
- 'court of session'.

Within the sheriff court there are three distinct procedures:

- **'small claims'** (for debts of up to **£3,000**);
- **'summary cause'** (for debts over **£3,000** but less than **£5,000**); and
- **'ordinary cause'** (for debts over **£5,000**).

### Small claims

In **small claims procedure**, although a sheriff presides over the court, it is meant to be less formal than other procedures. The court may still seem an intimidating place at first, but you should be given help by staff of the sheriff clerk's office on procedures and how to use the court.

You will first know about the action when you are sent a formal court document which is called a **'small claim court summons: defender's copy'**. There is an example of one at the end of this fact sheet.

The first court date, called the **'hearing date'**, is indicated at the front of the summons.

### **i** INFORMATION

If you want to dispute the debt you must respond to the summons by the **'return date'**. This is also shown on the front page. See 'Replying to the court' below.

At the top of the second page of the summons you will find the **'statement of claim'**. Check paragraph 4 "The facts and details of the claim".

Many creditors do not give a lot of detail. There are rules about the level of information needed, for example, it is not enough to attach a computer statement to show the amount owed. Formal contracts or other agreements have to be specified.

## Summary cause

In **summary cause** procedure you will be sent a similar document, also called a 'summons'.

This procedure is more formal.

The '**statement of claim**' is on page 2 of the service document. It must include:

- a concise statement of the facts of the case;
- a note of the nature of any contract which the pursuer claims exists;
- a note of any relevant law; and
- specific details of any goods or services provided, e.g. the date provided, the price, etc.

In summary cause, the date set for the case is called the '**first calling date**'.

## Ordinary cause

In debt recovery cases, **ordinary cause** procedure in the sheriff court and court of session are similar in their terminology and in the style of court documents. You are likely to receive: an '**initial writ**' for ordinary cause action and a '**summons**' in the court of session.

These documents are much more formal than sheriff court summonses. They include '**craves**' (ordinary cause) or '**conclusions**' (court of session), the '**condescendences**' (which means the facts as claimed by the pursuer) and the '**pleas-in-law**' (the legal rules and principles which entitle the pursuer to claim money from you).

## Replying to the court

Unfortunately, some people ignore court documents until the last minute when the case is already at court.



### WARNING

Do not ignore court documents. If you don't act you may end up paying more money in court expenses.



### REMEMBER

If you receive any documents from the court, keep them in a safe place.

Sometimes people deny having had court documents, despite the case calling in court. This can happen but is relatively rare. It does not help your case if you claim you have not had the court documents if you did receive them. Court documents are generally sent by recorded delivery. Check if anyone else in your household could have signed for the letter and did not pass it on to you.



### HELP

Before you try to reply to the court document yourself, it is worth trying to get some help. **Phone us for advice.** Have the court document next to you when you phone, as we will need to ask you about it. You can also go to a legal aid solicitor, law centre, money advice centre or CAB.

They can help you fill in the forms and can sometimes go to court with you. If you don't want to speak for yourself in court, and cannot afford a solicitor or cannot get legal aid, some courts allow non-solicitors to represent you. Others require you to represent yourself or to be represented by a solicitor or 'advocate'.

Advice and assistance through the legal aid system may be available to you for initial advice from a solicitor, who can help by advising on court procedures. This is subject to detailed rules about financial eligibility.

Legal aid is **not** available for small claim actions. You can obtain advice from solicitors about the preparation of your case under the 'Advice and Assistance Scheme' (assuming that you are eligible on financial grounds), but the solicitor will not be paid under this scheme for accompanying you to court.

#### **ADVICE**

For the purposes of this fact sheet we are assuming that you do **not** want to defend the action, but **do** want to ask for time to pay. This fact sheet provides basic information on how to do this.

#### **FACT SHEET**

We have a fact sheet on 'Time to pay directions and orders', which may be of assistance to you. **Phone us for a copy.**

The way you respond will depend on the type of procedure being used.

In small claims or summary cause actions, if you admit the debt but cannot pay it all at once, you should complete the part of the court document headed '**Application in writing for a time to pay direction**'. If granted, this allows you time to pay by regular instalments, or by a delayed lump sum payment.

#### **ADVICE**

You should complete the time to pay application and return it to the court **before the return date** shown on the summons.

#### **WARNING**

Time to pay directions are not available where the debt is over **£25,000**. For this reason they are not available in some ordinary cause or court of session actions. They are also not available for maintenance, child support, income tax, VAT or car tax.

If you are disputing a debt, particularly in ordinary cause or court of session cases, you will need legal advice. For example, in an ordinary cause action you must submit a 'notice of intention to defend' (a NID) within **21 days** and pay an appropriate fee to the sheriff clerk's office.

#### **ADVICE**

If you cannot get legal help, **phone us for advice.**

### **What happens next?**

If you have admitted the debt and applied for time to pay, the creditor may accept or reject the offer. If your offer is accepted, start making payments immediately.

#### **FACT SHEET**

If you have problems with the arrangement you may be able to ask to reduce the payments. We have a fact sheet on 'Time to pay directions and orders', which may be of assistance to you. **Phone us for a copy.**

If the creditor does not accept the offer, the court will hold a hearing to look at the application.

If you have defended the case under the small claims procedure, it will go to a full hearing of the case. The sheriff will try to identify the disputed

elements in the case. The sheriff can try to decide the case at this first hearing, or fix another hearing, for example, to allow witnesses to attend. Whether the case is '**continued**' (adjourned) or not, you should make sure that you are in a position to produce any evidence and witnesses you have to back up your defence.

In summary cause action the sheriff will identify the facts, the defence and the legal basis of the case. If the sheriff finds that the claim or defence is not soundly based in law, the case will be decided at the first hearing. Where there does not appear to be a legal case to answer, the sheriff will try to establish whether a negotiated settlement is possible. If it is not possible, a '**proof**' (a full hearing of evidence) will be fixed.

### **WARNING**

Ordinary cause and court of session procedures are more complex and you should not try to deal with them without help from a solicitor.

## What the court will do

If a time to pay application is successful, the court will grant a '**decree**' (court order), subject to time to pay. This is called a time to pay direction. As long as you stick to the terms and pay on time, no further action will be taken against you. If you are unable to pay the time to pay direction, you can apply to have the amount varied.

### **FACT SHEET**

We have a fact sheet on 'Time to pay directions and orders', which may be of assistance to you. **Phone us for a copy.**

### **WARNING**

If you ignore the summons or writ, the court will grant an open decree against you for the sum owed, plus interest and the pursuer's expenses.

## Limits on costs and expenses in the small claims court

If a defended small claims action is for a debt under £200, no expenses will be awarded against you if you lose the case. If the amount claimed is over £200 and less than £1,500, the limit is £150. For claims over £1,500, expenses can be awarded up to 10% of the value of the claim.

### **INFORMATION**

This information about costs and expenses is for claims made on or after 14 January 2008. For claims before 14 January 2008, **phone us for advice.**

However, in some cases these limits on expenses do not apply. This is when:

- have not stated a defence, or having stated a defence have not gone ahead with it, or having stated it have not acted in good faith as to its merits; or
- the court decides there has been 'unreasonable conduct' on your part in relation to the proceedings or to the claim.

In other procedures the rule is that you will have to pay the pursuer's expenses and costs if you did not defend the action. You will also have to pay expenses and costs if you did put in a defence but lost the case.

The pursuer will also be entitled to interest on the debt. The rate of interest being claimed must be indicated on the claim form.

It may be the rate in the original contract or the 'judicial' rate (this is the rate allowed under current court rules). The current rate is 8%.

## Enforcement

Diligence is the technical term for debt enforcement in Scottish law. Creditors can enforce your debt using diligence if an open decree is granted (which means that the debt is due for immediate payment) or if a time to pay direction has been broken. However the creditor must always serve a 'charge for payment' before diligence can begin. This is a legal document and will have 'Charge for Payment' written across the top.



### FACT SHEET

We have a fact sheet on 'Enforcing a debt against you by diligence', which may be of assistance to you. **Phone us for a copy.**

Diligence may include:

- arrestment of your bank account;
- arrestment of your earnings;
- attachment of non-domestic property;
- application for an exceptional attachment order for domestic property; or
- Inhibition on the sale of your house.



### HELP

If you are worried about a creditor using diligence to enforce a debt, **phone us for advice.**



### INFORMATION

There are ongoing changes to the laws about diligence. We will try to update our information on a regular basis but if you have any queries, **phone us for advice.**

**Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.**

**Freephone 0808 808 4000 Website [www.nationaldebtline.co.uk](http://www.nationaldebtline.co.uk)**

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**Small Claim Summons**

Action for/of

(state type, e.g. payment of money)

**DEFENDER’S COPY: Claim for or including payment of money (where time to pay direction or time order may be applied for)**

Sheriff Court  
(name, address, e-mail and telephone no.) **1**

**Sheriff Court  
1 Carlton Place  
Glasgow**

Name and address of person making the claim (**pursuer**) **2**

**Ace Credit Co  
7 Black Street  
Glasgow**

Name and address of person against whom claim made (**defender**)

**James Mac Tavish  
18 Green Street  
Glasgow**

Claim (form of decree or other order sought – *complete as in section 4 of Form 1*) **4**

**The pursuer claims from the defender the sum of £570 with interest on that sum at the rate of 15% annually from the date of service together with expenses of bringing the claim.**

Name, full address, telephone no., and e-mail address of pursuer’s solicitor or authorised lay representative (if any) acting in the claim **5**

**Smith, Black and Co  
27 Rainy Lane  
Glasgow**

<b>6</b>	<b>RETURN DAY</b>	<b>5 November</b>	<b>2004</b>	
	<b>HEARING DATE</b>	<b>19 November</b>	<b>2004</b>	<b>10 am.</b>

**NOTE: You will find details of claim on page 2.**

**7. STATE DETAILS OF CLAIM HERE OR ATTACH A STATEMENT OF CLAIM  
(To be completed by the pursuer. If space is insufficient, a separate sheet may be attached)**

The details of the claim are:

1. The parties are as designed above.
2. The Defender has refused or delayed to pay the sum claimed.
3. The Pursuers have a place of business at 7 Black Street Glasgow. The Defender has resided at the address in the instance for 3 months prior to the raising of the action and is domiciled there.
4. On or about May 2002 the Defender obtained loan facilities from the Pursuers. The Defender borrowed £570 which is the sum sued for. A copy of the credit agreement and a statement of account is attached.

**8. SERVICE ON DEFENDER**

(Place) Glasgow (Date) 29 June 2004

To: James MacTavish (Defender)

You are hereby served with a copy of the above summons.

*J Smith*  
Solicitor/~~sheriff officer~~  
*delete as appropriate*

**APPLICATION IN WRITING FOR A TIME TO PAY DIRECTION  
OR TIME ORDER**

**I WISH TO APPLY FOR A \*TIME TO PAY DIRECTION/TIME ORDER**

**\* delete whichever does not apply**

**I admit the claim** and make application to pay as follows:

(1) by instalments of £ 15 per \*week/~~fortnight~~/~~month~~

**OR**

(2) In one payment within \_\_\_\_\_\*weeks/ months from the date of the court order

To help the court, please provide details of your financial position in the boxes below

**\* Please also indicate whether the payments/receipts are weekly, fortnightly or monthly**

<b>My outgoings are:</b>	*Weekly <del>fortnightly</del> monthly
Rent/Mortgage	£ 65
Council tax	£ 15
Gas/electricity etc	£ 25
Food	£ 65
Loans and credit agreements	£ 35
Other	£ 40
<b>TOTAL</b>	<b>£ 245</b>

<b>My income is:</b>	*Weekly <del>fortnightly</del> monthly
Wages	£ 260
Social Security	£ 0
Other	£ 0
<b>TOTAL</b>	<b>£ 260</b>

Number of children

Number of dependant relatives

Please list details of all capital held e.g. value of house; amount in savings account, shares or other investments:

**\*APPLICATION FOR RECALL OR RESTRICTION OF AN ARRESTMENT**

I seek the recall or restriction of the arrestment of which the details are as follows:-

Date:

*\*Delete if inapplicable*