



Euler Hermes

# Collection Profile UK

## Collecting in the UK

- An increase in the average DSO to 53 days is perceived as a result of high value unpaid invoices.
- UK courts are efficient in delivering timely decisions, but recent changes in charges mean it can be expensive for large value debts. Timely escalation from credit control to skilled external debt collection agencies remains effective.
- The insolvency framework is oriented towards the protection of creditors' rights, although an emphasis has been made on the need to rescue viable businesses. Such proceedings would not guarantee that the debt would be recovered as in practice there are no limitations as to how much of the debt may be written off during renegotiations. Furthermore, liquidation proceedings would rarely yield any proceeds to unsecured creditors.

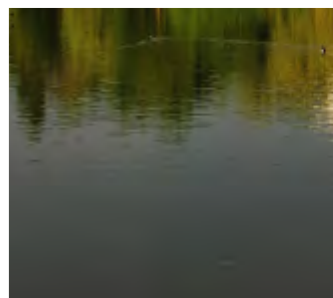
## Collection complexity



## Complexity relating to

Notable → Severe

Payments	\$ \$ \$ \$
Court proceedings	⚖️ ⚖️ ⚖️ ⚖️
Insolvency proceedings	↘️ ↘️ ↘️ ↘️



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Our knowledge serving your success

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## General information

### Availability of financial information

Visibility on company records is reliable although limited. For example, SMEs are not required to publish full financial information. Information, therefore, is the lifeblood of Euler Hermes, with our risk department having various tools available to allocate each company a grade reflecting its financial health and how it conducts business. Grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

### Main corporate structures

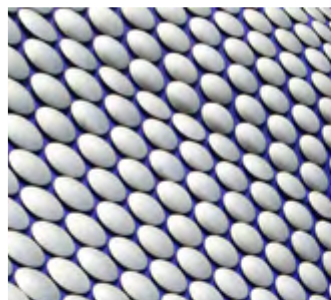
Liability for business debts is determined by legal structures, which are described as follows:

- Very small enterprises often take the form of a Sole Proprietorship, a business entity established by assets contributed and owned by one person acting in their own name who may thus be held liable all debts. Partnerships are founded by at least two partners who are jointly and severally liable for the obligations of the entity. Liability limitations may be put into place through Limited Partnerships (LLPs) which involve one or more managing partners jointly liable for the company's operations and debts, together with silent partners liable only in relation to their capital contribution.
- In a Limited Liability Company (Ltd), shareholders are held liable for the company's debts in relation to their capital contribution, but there must be a minimum capital fund of GBP 1. Larger businesses would rather be set up through Public Limited Companies (PLCs) or Joint Stock Companies (minimum capital of GBP 50,000).

### Regulatory environment

The UK is split into three distinct legal systems, the laws of England and Wales, the laws of Scotland and the laws of Northern Ireland. The law is partly provided through Statutes, however the decisions rendered by Higher Courts are considered as a binding Case Law which must be followed by the Lower Courts. The information provided here relates to debts, contracts and claims which are governed by the laws of England and Wales.

Proceedings in the Commercial Court are governed by the Civil Procedure Rules (CPR). County Courts would typically deal with small claims (professional negligence, personal injury) below GBP 50,000, while the Queen's Bench Division deals with most contract (and tort) claims. The Chancery Division may also consider some contractual disputes, although it would rather deal with claims involving trusts, estates, land, mortgages, deeds, partnerships as well as corporate insolvency matters. In addition, specialized judges render judgments in the Commercial Court (High Court), the Bankruptcy and Companies Court, and the Patents Court (Chancery Division).



**Days Sales Outstanding (DSO):** Payments in the UK take 53 days on average for listed companies, a significant increase on previous years.





## Collecting overdues

### Amicable action

#### Negotiating

Domestic courts are reliable and since 1999, regulatory reforms have significantly improved litigation proceedings, though amicable settlement opportunities should nonetheless be considered as a serious alternative to formal legal proceedings.

Before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company is still active and whether recovery chances are good. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt.

### Legal action

#### Ordinary proceedings

Legal action will usually be commenced when amicable collection has failed. Before issuing a claim, the claimant must send the defendant a detailed letter, setting out a clear summary of the facts on which the claim is based, enclosing any supporting documents and giving the defendant a reasonable time period to respond. The defendant should respond confirming whether the claim is accepted and if not, why, providing evidence in support. Both parties should act reasonably in attempting to resolve matters before proceedings and they should continue to act in this way throughout the claim otherwise the court has the power to penalize unreasonable behavior. Summary judgments may be obtained provided that the debt is certain and undisputed. For instance, if the debt is in excess of GBP 750, a statutory demand procedure (costing around GBP 1,500) allows the request of payment within 21 days (it also allows filing a winding up petition if the debtor does not react). When the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may furthermore be triggered. In this case, the demanding party may request a domestic court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings. If litigation is unavoidable, the claim will be issued by the appropriate court and served to the defendant, who is given 14 days from service to acknowledge the claim or file a defense. If the defendant acknowledges the claim within that timescale, they will be given a further 14 days (i.e. a total of 28 days from service of the claim to file a defense), but if the defendant fails to file a defense, the claimant can apply to the court for default judgment. If the defendant does file a defense and the claimant considers that it is without merit and unlikely to succeed, they can apply to the court for strike out of the defense and/or summary judgment. The court will usually list a hearing of the application and the claimant will need to show the court that the defendant has no reasonable prospect of defending

the claim and that there is no other reason why the claim should proceed to trial. If the claimant is successful, judgment will be entered against the defendant and the claimant can seek fixed costs of the application. If the application is not successful, the claim will continue as a defended claim as set out below.

If a defense to the claim is filed, the court will allocate the claim to a particular track depending on its value (Small Claims Track for cases where the value of the claim is below GBP 10,000, Fast-Track for cases up to GBP 25,000 likely to last for less than one day and where expert evidence is limited to one expert per party and in only two fields, Multi Track for all other claims). If the claim is allocated to the small claims track, the court will set a date for the final hearing (which is informal) when the court will make a decision. If the claim is allocated to the fast track or the multi-track, the court will set directions for the management of the claim to trial rather than just list a final hearing as with the small claims track. Directions will include the disclosure of evidence by each party, the exchange of witness evidence and the listing of a trial date. On the multi-track, the court may order the parties to attend a case management conference prior to trial to ensure that they have complied with the directions and that they are ready for trial.

When issuing a claim, the claimant will set out what remedy they seek, which may include a money judgment for a debt, compensatory damages, mandatory or prohibitory injunctions, declarations, specific performance and orders for sale of property.

#### Necessary documents

The claimant must always be able to evidence their right to the remedy they're seeking. By way of example, if the claimant seeks a money judgment for non-payment of goods, it should supply:

- Confirmation of the defendant's order
- Invoice
- Delivery note
- Demand for payment

The documents required will depend on the remedy sought but it is always best to keep good records, especially accounting records, and to keep copies of communications with customers. Also consider whether the debt is secured or whether it is guaranteed by way of personal guarantee.

#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

### **Time limitations**

Contract claims must normally be brought within six years, as provided under the Limitation Act 1980 (as amended). Beyond this limitation period, legal proceedings cannot be issued for recovery.

### **Precautionary measures**

Precautionary measures may help preserve the creditor's interests pending a final decision. Upon request, the courts would typically award preliminary injunctions (freezing injunctions, search orders, specific disclosure, etc.) to preserve the status quo. It is however necessary to show that irreparable harm (assets dissipation, evidence destruction, etc.) is likely unless the injunction is granted. These measures may usually be ordered *ex parte* (i.e. without the respondent being present) and may be obtained on the same day depending on the circumstances of the case, though the court may require that the claimant provides security on costs to compensate potential losses generated to the respondent as a result of the emergency action.

### **Lodging an appeal**

The parties may be entitled to lodge an appeal against a decision rendered in first instance and they must satisfy the criteria for appeal which is that the court made an error in law or fact when arriving at its decision. Appeals are not common as the cost risk can often outweigh the commercial benefit of proceeding.

### **Enforcing court decisions**

Once a judgment has been obtained, either in default or after trial, if payment is not forthcoming from the judgment debtor, enforcement action may be taken. There are a number of options available to the judgment creditor. An application may be made to the court where judgment was obtained for a Warrant of Execution. This form of enforcement is suitable for smaller amounts of outstanding debt. The County Court Bailiff will attend the judgment debtor's address and request payment. The bailiff may levy upon goods to the equivalent value of the judgment debt. Unless invited, the bailiff will not be able to enter residential premises. The life of a warrant of execution is initially for a 12 month period and maybe extended upon application subsequently.

An application may also be made to the court where judgment was obtained for a Writ of Fieri Facias (Writ of Fi Fa). If the outstanding debt is under GBP 600, costs of execution will not be payable by the judgment debtor and as such a Warrant of Execution would be more suitable. If the debt is over GBP 600, an application to transfer proceedings to the High Court can be made to enable a Writ of Fi Fa to be issued. The Writ of Fi Fa should then be sent to a High Court Enforcement Officer also known as a sheriff. The sheriff will then seek to enforce the writ and add any fees, poundage or other costs of execution to the judgment debt. The sheriff is able to levy upon goods to the equivalent value of the judgment debt to sell at auction to offset against the amount outstanding.

Orders to Obtain Information may help assess the judgment debtor's means and can be sought against an individual or an officer of a company/corporation. The judgment debtor will be ordered to

attend court and will be asked questions about their financial means so that the judgment creditor can decide the best method of enforcement.

Third Party Debt Orders may be obtained if the judgment debtor is owed money. The judgment creditor may apply for these monies to be paid directly to them e.g. money held within the judgment debtor's bank account.

Charging Orders allow the judgment creditor seeking security over property owned by the judgment debtor (e.g. their home) to the value of the judgment debt. It is not strictly a 'charge' over property but gives the judgment creditor an interest in the proceeds of sale of the property. Once a judgment creditor has a charging order they may be able to apply to the court for an order for the sale of the property to which it relates. There should be available equity and the court will take a number of factors into account such as whether the property is a family home.

### **How long could legal action take?**

The courts would not treat cases involving international parties differently than domestic claims; however the costs and delays for bringing foreign witnesses may be higher.

### **How much could this cost?**

As a general rule, the defeated party may be required to pay part of the other party's costs. Only fixed costs are recoverable on the small claims track, so regardless of legal costs, one will only be entitled to seek recovery of a fixed amount if successful. For fast track and multi-track claims, the parties will file and serve cost statements prior to the trial and the court will consider what proportion of the costs claimed should be payable by the defeated party after the conclusion of the trial. The court rules enable the court to take a large number of factors into account in deciding costs, including a party's conduct and whether it has acted reasonably and in the spirit of the court rules prior to and during proceedings.

Conditional arrangements whereby attorneys are not paid upfront but rather receive of a fixed sum upon success (i.e. 'no-win-no-fee') are lawful. Since April 2013, contingent fees whereby legal professionals are entitled to receiving a percentage of the final award are capped to 50% of the claim. Third-party litigation funding companies are allowed, although uncommon.

## **Alternatives to legal action**

### **Alternative Dispute Resolution methods (ADR)**

The parties may alternatively decide to settle their dispute through alternative methods, such as mediation, early neutral evaluation, expert determination or arbitration.

Mediation involves the nomination of a mediator who is given responsibility for helping the parties reach a compromise. In other words, the mediator has no authority to decide on the behalf of the parties and cannot bind the parties with a decision. An agreement is only binding if a settlement agreement is entered into between the parties at the end of the mediation.

The mediator really acts as a facilitator to settlement.

Arbitration involves the parties agreeing to rely on an independent and impartial third-party arbitrator, who is given authority to settle the dispute on their behalf. The arbitrators' decision will be binding on the parties.

As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays, allows preserving confidentiality and offers a binding decision which may then be enforced before the courts if necessary. When international transactions are involved, international arbitration may also be considered.

### Foreign forums

Having foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual since domestic courts normally provide timely decisions. The UK is nonetheless a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to a contract and select the court that will have jurisdiction over disputes. The court will decide if the case is one which the courts of England and Wales have exclusive jurisdiction over (e.g. employment, consumer protection, unfair contracts). If the courts of England and Wales do not have exclusive jurisdiction, the court may elect 'seized' jurisdiction of the matter. The court would then consider if the parties have agreed (within the contract) that the courts of England and Wales shall have jurisdiction or if it is a case which would be best heard in the courts of England and Wales. The courts of England and Wales normally hear disputes which are subject to English law but do on occasion hear cases based on other legal codes, especially international contracts for the provision of goods.

### Enforcing foreign awards

Foreign decisions issued against foreign debtors may be enforced in the UK, although various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing an EU judgment in the UK are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001).

If the judgment qualifies as an uncontested claim, it can be enforced directly in England and Wales without registration by use of an EEO. The English bailiffs will need to be provided with (i) a copy of the judgment, (ii) an EEO certificate (issued by the original deciding court), and (iii) translations of (i) and (ii). If the debtor has assets in England and Wales the judgment can be enforced against these assets. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment



within England and Wales is relatively simple. The judgment holder must apply to the High Court for the judgment to be registered and provide the High Court with an authenticated copy of the judgment, a certified translation (where not in English), an Annex V certificate issued by the original deciding court, and if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were an English Judgment (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside of the EU would normally be recognized and enforced provided that the issuing country is party to a bilateral or multilateral agreement with the UK. In the absence of reciprocal arrangements, exequatur proceedings would take place before domestic courts. As a general rule, foreign judgments cannot be reviewed on the merits of the case, but the courts would generally deny admissibility where the issuing foreign courts do not recognize and enforce British judgments (reciprocity), where the foreign decision is neither final nor enforceable in the issuing country, deemed incompatible with domestic public policy or with decisions rendered by domestic courts, if the defendant has not benefited from a due process of law, etc.

The UK is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, meaning that its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.

### Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

## Handling insolvent debtors

Insolvency in the UK may be considered from different perspectives. On one hand, the term 'Bankruptcy' in the UK only applies to insolvent individuals, but they may have few or no assets, so bankruptcy proceedings would not usually be cost effective to pursue since the unsecured creditor would receive a very low dividend, if any at all. Nonetheless, bankruptcy proceedings may be used against individuals (such as sole traders) liable for undisputed debts over GBP 750, provided that the creditor is able to show that the debtor is unable to pay.

Petitions should be presented in the nearest county court and must be personally served to the debtor within 14 days of the date of the bankruptcy hearing. If a bankruptcy order is made, either the Official Receiver or Trustee in Bankruptcy will attempt to realize assets for the benefit of creditors. There are numerous rules concerning the assets that might be realized and the way in which the Official Receiver/Trustee must conduct the realization. There are also rules as to how creditors will be paid, for example secured and preferential creditors will be paid first and unsecured creditors will receive a pro rata dividend upon conclusion of the bankruptcy. There are also statutory provisions which may assist the Official Receiver/Trustee, for example the ability to set aside transactions entered into by the debtor immediately prior to bankruptcy which were designed to put assets beyond the reach of creditors. Having said this, if the debtor has few or no assets, bankruptcy will not usually be cost effective because the unsecured creditor may receive a very low dividend, if any at all.

Individual Voluntary Arrangements (IVA) may also be concluded: these are legally binding agreements between the debtor and their creditors which normally last five years, a period during which the debtor will be expected to pay what he can afford outside reasonable living costs into the IVA. All interest and charges will be frozen at 0% and creditors will be prohibited from demanding additional payments. Once the IVA is accepted by the creditors, the Insolvency Practitioner will monitor the IVA's progress and distribute payments to all creditors on a pro-rata basis until the successful completion of the IVA. Debtors will often enter into an IVA to avoid being declared bankrupt.

On the other hand, various proceedings may also be conducted against insolvent companies (as provided under the Insolvency Act of 1986, as amended in 2000), which broadly defines insolvency as the state of a company deemed unable to pay its debts as they fall due, or if the value of its assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities. Corporate insolvency proceedings will be considered below.





## Insolvency proceedings

### Out-of-Court proceedings

The law provides no particular out-of-court proceedings.

### Restructuring the debt

Even though the system remains oriented towards the protection of the creditor's rights, the Enterprise Act of 2002 has introduced an emphasis on rescuing businesses. Several procedures may be considered, though in order to commence any type of insolvency proceedings one must be able to evidence the debt by either having a judgment for the payment of money or documentation which will prove the debt (e.g. invoices, statements of account, delivery notes etc.).

Company Voluntary Arrangement (CVA) proceedings first allow a debtor to retain legal control over the company, under the supervision of an Insolvency Practitioner. The parties are thus given a chance to reach a legally binding agreement, which the debtor will be expected to respect while all interest and charges will be frozen and creditors will be prohibited from demanding additional payments.

Once the arrangement is accepted by the creditors, the Insolvency Practitioner will monitor its progress and distribute payments to all creditors on a pro-rata basis until successful completion. Debtors will often enter into a CVA to avoid being declared bankrupt.

Administration proceedings are another form of rescue method in which the court appoints an administrator who acts on behalf of all creditors to attempt to rescue and restructure the debtor company, in order to achieve a better outcome for creditors than liquidation. The debtor is not left in control of the company. The administrator must take the needs of all of the creditors into account and must act in their best interests which may ultimately lead to the winding up of the company. Alternatively, an administrative receiver may act on behalf of a charge holder (rather than on behalf of all creditors).

### Winding up proceedings

Winding up proceedings are more commonly relied upon than restructuring proceedings and may be triggered when a debtor is liable for an undisputed debt over GBP 750 and is unable to pay their debts as they fall due. This is proven by service of a statutory demand on the company or making a formal demand for payment. In addition, a company is also deemed unable to pay its debts if the value of its assets is less than the amount of its liabilities taking into account its contingent and prospective liabilities. If the demand is not complied with, a winding up petition can be presented at court and again, if an order is made for the winding up of the company, the assets of the company will be distributed by the official receiver or a liquidator.

### Priority rules

Under the absolute priority rule, secured creditors would first obtain compensation from the proceeds of the sale of the debtor's assets. Secured debts would include debts protected under a Retention of Title provision as well as debts incurred as a result of the insolvency proceedings. Preferential debts (pension schemes, employees' wages) would then have priority over unsecured claims.



### Cancellation of suspect transactions (clawback)

Under the Insolvency Act, the liquidator is entitled to reconsider any transaction which may have put assets beyond the reach of creditors or which may have been carried out at an undervalue (e.g. the transfer of valuable property immediately prior to insolvency). If certain criteria are met, the liquidator has the power to apply to the court to have these transactions declared void and set aside. Various suspect periods ranging from six months to two years may apply.

### How long could insolvency proceedings take?

Administration proceedings take around one year but liquidation can take three years at minimum, depending on the size of the debtor company.

### Necessary documents

Copies of invoices, statements of accounts, assignment of rights from (Letter of Authority if international, and assignment of rights to dividend if UK).

### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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