

Collecting Debts – What to do Next

If a business cannot obtain payment of a debt from a customer after the normal credit control procedures are exhausted, then it will need to consider taking further action to recover the sum due. Mediation with the debtor, involving negotiation through a third party, can be used to resolve the position, but if this fails other measures are available. These may involve using external debt collectors or starting court or insolvency proceedings.

Debt collection agencies generally have the time, expertise and resources to chase up the outstanding payment due and can act quickly. However, an agency's commission will typically be 8-10 per cent of the cost and perhaps more if it is an old debt. If you use a debt collection agency, it is worth checking that it is registered with the Creditor Services Association to ensure their methods and practices are reputable.

Taking formal legal action is generally more cost-effective for larger debts. The 'small claims track' can be used for debts under £5,000. This is a relatively simple process, not normally requiring legal representation, although professional advice is useful in preparation of evidence in suitable form. Debts exceeding £5,000 are pursued in court, the procedure used depending on the size of the claim. The court issues a summons to the debtor. If the debtor does not respond, judgment in default can be obtained, which automatically requires the debtor to make payment without considering the merits of the case. If the debtor contests the claim, a request for summary judgment can be made so the court can decide if the debtor has any legal basis for refusing payment. If the debtor admits the debt, no court hearing is necessary and enforcement action can be taken.

It is also possible to start bankruptcy proceedings for debts of £750 or more by issuing a statutory demand or, if the debtor is a company, a winding-up petition. A winding-up petition is more commonly used where there are several creditors and is generally more expensive than court proceedings. Failure to pay a statutory demand within 21 days is grounds for presenting a petition for the bankruptcy of the debtor.

Choosing how to proceed with collecting a debt will depend on factors such as the size of the debt and the cost (financial and time) involved. If you are having difficulty in obtaining payment from a customer, it is best to seek professional advice on how to proceed with your claim.