

Debt Recovery

Debtors can be a cause of frustration for businesses and individuals alike. Having debtors can cause cash flow problems and damage the creditworthiness of businesses.

There are a number of options available to a creditor for recovering debt. However, before any action is taken it is advisable to ensure that the debtor has the means to pay and that there isn't any genuine reason for payment not having been received.

Initially correspondence should be entered into with the debtor to establish their intentions regarding the debt. If an instalment plan can be agreed then this should be considered as should any other settlement option. If the issue cannot be resolved then the threat of action to enforce the debt may encourage payment.

LITIGATION

If further action is necessary a creditor can issue County Court proceedings against the debtor for the sums due. The cost of issuing proceedings will vary depending on the level of debt claimed. However, once court proceedings begin the creditor will not be able to withdraw without consent or a judgment.

If the debtor defends the proceedings on the grounds that the debt is disputed the matter will continue until trial and if successful the creditor will have a county court judgment over the creditor requiring payment. If payment is not made within the time frame set by the court the creditor will be able to take enforcement action against the debtor.

INSOLVENCY

An alternative to litigation is insolvency and more particularly the threat of insolvency proceedings against the debtor. The insolvency method used will vary depending on whether the debtor is an individual or a company. However, insolvency is only suitable where the debt is not disputed, if there is a genuine dispute a creditor should issue court proceedings rather than proceed with insolvency. If a debtor is able to show a genuine dispute then a creditor may be penalised in costs for not following the correct process.

If the debtor is an individual a statutory demand can be served giving them 21 days to pay the debt or face a bankruptcy petition. If payment is not received a petition can be issued at court to make the debtor bankrupt at a court hearing in which the debtor may challenge or accept the petition.

If the debtor is a company a statutory demand can again be served giving it 21 days to pay or be wound up. If payment is not received a winding up petition is issued at court and the debtor company will have an opportunity at a hearing to contest the petition.

A statutory demand is a relatively cost effective method of enforcing a debt. It is simply served on the debtor and requires payment to be made within 21 days. The court is not involved at this stage and the creditor is not obliged to continue with the insolvency proceedings.

However, once 21 days expire a creditor is able to petition the court to either make an order for bankruptcy or wind up the debtor.

The threat of insolvency proceedings which are advanced through the service of the statutory demand is often enough to prompt payment of the debt.

If the debt is not paid the appropriate petition can be issued at court. However, it is expensive and time consuming to bring insolvency proceedings and even if successful the creditor is not guaranteed to receive the debt in full.

Instead the creditor simply joins a pool with all other creditors and ranks equally with them. If the debtor is wound up or made bankrupt it is likely they do not have sufficient means to meet all liabilities. As such a creditor may only receive a small proportion of the debt owed and when the cost of insolvency proceedings is taken into account it may not be attractive.

Ultimately enforcing a debt can be an expensive and time consuming exercise. However, if the debtor is able to pay the debt the threat of insolvency proceedings or litigation can prompt payment. Creditors need to balance the risk of enforcing debts with the risk of being seen as a 'soft touch' by other debtors.