



The process of getting paid

Letters, debt collectors, lawyers, courts & bailiffs

Getting paid for work done is something that every business needs to do. This is usually a formality – payment is sent on receipt of the invoice. Sometimes a reminder phone call is needed. However, on a few occasions payment is not sent.

When this happens businesses needed to look at other options to recover the debt. In some cases the business is entering new territory and needs to quickly master a range of unfamiliar options and debt recovery processes.

Most debt collection activities can be, and are, carried out by the in-house credit control team. However, choosing the order in which to do these is one of the more cost sensitive decisions that the organisation must take.

For example, starting legal action too soon can mean the cost of collection is unnecessarily high. Whereas an alternative debt recovery strategy, adopted early in the recovery cycle, can mean that the business has the chance to collect the debt and keep its costs low but still have the option of starting legal action if the debt remains unpaid.

This article looks at the pros and cons and best timing of the various collection strategies.





Debt recovery

Debt recovery means all activities which happen after the credit control process has completed. This includes in-house debt collection activities, late-payment demand letters, and third party collection by authorised and regulated Debt Collection Agencies (DCAs). These are low cost collection activities and are the amicable solution for debt recovery - useful if you want to maintain a good relationship with the customer, keep the cost of collection low, and avoid the expense of legal recovery.

The best option is to keep debt recovery in-house. However, in some cases the collections team are unfamiliar with some of the processes or are time poor. This can mean the recovery process stalls and the debt goes uncollected. Fortunately, many activities can be outsourced to regulated firms, such as ACS, which offer some services on a no-win no-fee basis.

Keep it in-house

Keeping debt recovery in-house is the best option for an organisation. In general, the earlier you act, and the more consistent you apply consequences, and move your outstanding accounts to the next stage of the process, the more likely you are to recover the debt.

Best practice credit control and debt recovery are described in a number of our white papers but in particular Top tips for credit control and The effect of time on debt recovery rates and business performance.

Best practice audits: ACS provides an audit and review service for a business's credit control and debt recovery processes. The aim is to assist the business to improve debt recovery rates by identifying any areas that might benefit from changed work practices or new processes.

Outsourced credit control: For business which are time or resource poor ACS provides a full outsourced credit control service.

Late Payment Demand Letters

If the first stage debt collection activities have not been rewarded by payment a cost effective next step is to send a Late-Payment-Demand letter or LPD.

LPDs are a way of telling the debtor that you want payment. There is no set form for LPDs but an LPD will usual state:

- The name and address of the person/organisation that owes you money.
- Their status - sole trader, partnership, or limited company.
- The value of the debt outstanding.
- That further action will follow if payment is not received by a set date.

If the debt is a commercial debt a business has the right to add interest and compensation to the debt. Details of what can be claimed are on the government website. However, ACS suggests that in the first instance interest and compensation is not added to the claim. This keeps relationships on an amicable basis.

LPD's can be drafted and sent by the in-house credit control team. Often, in order to add weight to the LPD businesses use a third party DCA to draft and send an LPD.



Third party LPDs: An LPD letter sent by a authorised and regulated DCA:

- Shows the debtor that you mean business and are escalating the debt recovery.
- Has the weight and authority of a regulated and authorised collection agency behind it.
- Will not tie you into instructing a DCA.
- Leaves all options open for future recovery.
- Is a low cost, low risk next step option for getting tough.

LPDs on-line: ACS provides a low cost on-line LPD service for UK business.

This is a pay-as-you-go service with no hidden costs. There is no obligation to use any of its other credit control or debt recovery services. LPD letters are compliant with current regulations and can be used to support future legal action.

Debt Collection Agency (DCA)

In most cases an LPD is sufficient to get the debt paid. In the few cases that the LPD has been ignored many organisations first thought is to start legal recovery. Legal proceedings should be a last resort. A more cost effective option is to place the debt with a DCA. This has several advantages:

- There are no upfront costs.
- It keeps the good customer relationship.
- Legal action can be a later option.
- Regulated DCA's offer a no-collection no-fee service.
- Often any fees are paid by the debtor and thus the effect cost of collection is zero.

Generally, using a DCA to collect a debt is more cost effective than doing it in-house and is more cost efficient than instructing a legal firm.

A reputable regulated and authorised DCA

will provide a no-win no-fee service. This means you will not pay a penny if the debt cannot be collected. If the debt is collected then often the DCA's fees can be collected from the debtor.

In addition, a DCA can prepare the ground for recovering the debt through the courts and the best DCAs will have a panel of solicitors which they can use to collect a debt if an amicable repayment cannot be achieved.

The ACS white paper Options for debt recovery: instruct a legal firm vs. engage a DCA provides valuable insight for businesses deciding what to do after an LPD has been ignored.

Debt collection: ACS provides debt recovery and cash-flow services in the UK and overseas. Its service portfolio includes credit management, debt collection, tracing and international debt recovery.

It works on a strict no collection no fee basis. It recovers business-to-business and consumer debt of any size and age. It works with clients in all sectors. It works with sole traders, SMEs, and multi-national corporations.



Legal collection

DCA debt collection is usually successful but occasionally it is necessary to consider legal collection. Before starting legal recovery there are some important issues to consider: will legal collection result in success, will the cost outweigh the benefit, does the debtor have the resources to pay. Also, often ignored, even if a judgement is awarded against the debtor this does not mean they will pay. Enforcement action may be necessary.

Legal collection typically starts by sending of a Letter Before Action (LBA) which asks for payment. An LBA is a more formal document than an LPD and there are some strict protocols for sending these. An LBA is the last opportunity a debtor has to pay before legal proceedings are started. A business starting this process is committing to a potentially time consuming and costly process.

Letter-Before-Action (LBA)

Sending an LBA is the first step in the process of recovering a debt through the courts. An LBA gives the customer a deadline by which to pay the debts. It costs very little to send but commits the business to a potential large spend in the future. Legal action may not follow an LBA. The customer may pay - some claim 80-90% of undisputed debts are paid after sending an LBA.

There is no requirement for an LBA to be drafted or sent by a legal firm and your in-house credit management team can draft and send the letter. However, because an LBA is the start of legal action it is advisable to seek guidance before sending an LBA.

DCAs are able to provide LBA services either as part of follow on work of collecting the debt or as a single stand-alone service.

The cost to draft and send an LBA using the services of a DCA or legal firm is minimal and typically can be as little as a few pounds. Given the importance of these letters in the subsequent legal process this is an investment which is easily justified especially as there are processes and protocols which must be followed before the court will proceed with the case.

Pre-Action-Protocol: If the debt is from an individual the creditor will need to have followed the Pre-Action Protocol (PAP) for debt claims before proceeding with litigation.

Courts expect all parties to comply with this protocol. If it is not followed the claim could be "stayed" (put on hold) to allow a period for compliance or alternatively sanctions could be imposed.

The PAP applies only when a business is claiming payment of a debt through the courts from an individual - this includes an individual in business as a sole trader. It does not apply to business-to-business debt (unless the debtor is a sole trader).

The protocol sets the standards and timetable for the conduct of debt cases before legal proceedings are started. It is a set of steps that both parties are required to take before going to court.

The ACS white paper *Recovering debt through the courts* provides insight on the PAP

Court Action

If the LBA does not result in payment a formal legal claim can be started. An application can be made to a county court to



claim money owed by a person or business. This is known as making a court claim.

A claim can be made online if the claim is for a fixed amount of money or by completing a paper form. Details are on the government web site.

A court claim can be made by an individual or organisation. However, many organisations will instruct a DCA or a specialist debt collection solicitor.

Making a court claim involves some expense. There are up-front court fees to pay. Additional fees may be incurred if there is a court hearing or a judgement needs to be enforced. If the work is done by a legal advisor their fees will also be payable.

The court will expect that effort to resolve the dispute before taking legal action has been made. This means court action should only take place after the business has tried to reach an agreement with the customer.

Enforcement

If the court claim is successful the debtor may still not pay the money owed. The court can collect payment if the debtor does not pay after receiving the court order. However, there will be a court fee to pay.

The options available to a court include:

- Send bailiffs/sheriffs to collect payment.
- Get money deducted from wages.
- Freeze assets or money in an account.
- Charge the debtor's land or property.

The process to enforce the collection of a debt is time consuming and it is often better to instruct a specialist to do this. Also if it is necessary to apply at the high court to help enforce collection legal advice may be needed.

Legal recovery: ACS provides a legal recovery service through its network of approved affiliate legal partner firms. All legal action is issued and progressed in-house by its legal team providing an efficient and cost effective service.

If it has previously worked on the recovery of the debt the information gathered during its collection procedure will enable it to advise, in a free pre-legal report, whether legal action is viable and if so the most appropriate course of action to take.

Advanced Collection Systems

Established in 2000, ACS works with sole traders, SMEs and multi-national corporations. It provides credit management, debt collection services, tracing and international debt recovery. To find out more please visit the website, or telephone or email with your questions. Further information and resources including copies of this guide are available on its website.

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