

WHEN TO GO LEGAL: A CAREFUL BALANCING ACT

'Going legal' can be one of the most powerful tools in your collections armoury, but must be used with care

By Jonathan Hogg

WHEN to go legal is a constant concern for credit professionals. The best time to do so varies across a wide range of possibilities depending on the debt in question.

At one end of the spectrum is actual litigation, which should always be a last resort. However, at the other end of the spectrum, the sooner a debt goes legal, the greater the likelihood there is of a successful recovery.

At the outset, it is important to understand that going legal does not have to mean either taking proceedings or incurring major costs. What it does mean is taking early advantage of the beneficial advice that a legal professional can provide (of which more below).

As is often the case, the right time to go legal depends on many different factors, the most important of which are set out below.

Credit policy of the creditor

If a creditor has a fairly tight credit policy, it is likely that going legal will be considered at quite an early stage, such as after the second or third reminder.

If this is the case, it is important to stick to that policy because word gets around fairly quickly that this particular creditor means business and that reputation is likely to improve overall collections.

Nature of the debtor

It is a well-known fact that most bad debtors will ignore payment reminders until they see the first legal letter. At that point, they know that the creditor is really serious about payment and that debt will become a priority for payment.

Going legal at an earlier stage is more important where the debtor is not so well known to the creditor or has a sporadic payment history. If a debtor is a fairly newly established business, or one which appears to be in danger of insolvency, then the sooner the debt goes legal, the better the chance there is of preserving the creditor's position.

The nature of the debt

It is obvious that if the debt is a large one, then not only is earlier action desirable, but the costs risk on going legal is more justified. The age of a debt is also important, as the older a debt becomes, the less likely are the chances of recovery.

Improving your chances

As a general rule, the only downside of going legal is the cost. The upside is that it improves the chances of getting a better recovery.

It should not be forgotten that going legal includes a lot of different options. The most common is a letter before action, which will very often obtain the

desired response at minimal cost.

Whether a county court claim, bankruptcy or winding-up petitions are subsequently justified, is a careful balancing act for each specific debt, taking into account the ability of the debtor to pay and whether the likely cost can be either recovered or otherwise justified.

When credit professionals talk about 'going legal', it is often forgotten that one of the most useful aspects of this can be simply allowing an experienced debt recovery solicitor to look at the details of the debt and advise on the most appropriate options. At Guy Williams Layton, we believe that it is as important to tell you when not to proceed with legal action as it is to tell you when you should. There are circumstances when going legal is only likely to cause a creditor further losses, but the earlier such a position is established the better.

When to go legal is a careful balancing exercise taking into account all of the above factors. The most important thing is to work with a solicitor who will be honest with you about which claims to pursue (and how) and which to drop before further funds are wasted.

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