

Debt recovery: a freelancer's guide

In the second of his articles on the intricacies of getting paid, Andrew Leigh explores the options open to translators and interpreters when chasing payment becomes debt recovery



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Readers of my article in the last edition of *ITI Bulletin* will have seen that there is much that we can do individually to prevent difficult payment situations from arising and also when it comes to chasing up debts.

Even when 'chasing up' becomes 'recovery', we can still take steps on our own without having to turn straightaway to professional debt recovery services. But, whichever option we choose, the key is to be well informed and to understand the implications of each stage of the process.

Here in the UK, debt recovery is structured in such a way as to apply increasing pressure on the debtor to settle the debt at the earliest opportunity because the financial and commercial consequences of failing to do so become more serious as each stage progresses.

To recover or not to recover?

While it may be frustrating not to receive payment for work done, the fact remains that, every year, thousands of commercial debts end up not being paid for one reason or another. You have to decide whether it is commercially sensible to pursue your claim throughout a potentially long-winded and stressful process with no guarantee of ultimate success.

So, if the amount owed to you is small, it may be more time-effective to write it off as a bad debt or at least

to proceed only up to the point where you do not increase your debt further through advance payment of court fees, solicitors' costs, etc.

In addition, if you discover that your debtor client is experiencing serious financial problems and is facing the prospect of being wound up, you will generally have the status of an unsecured creditor and you will be unlikely to receive anything from the liquidation proceeds once higher-ranking creditors have been satisfied.

You can also find out (using facilities such as Trust Online¹) whether your debtor has a previous history of having county court judgments (CCJs) imposed and

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STATUTORY DEMAND FOR PAYMENT

In the case of an undisputed debt of over £750, it is possible to serve a statutory demand for payment. The debtor will then have 21 days to make payment, failing which you can petition the court to wind up the company (or make an individual bankrupt). This may be effective in terms of giving a warning shot to the debtor but actually pursuing an insolvency claim will cost significantly more than £750 and will further increase your debt with no assurance of being paid in the end. Seek legal advice.

whether they paid up in the light of those judgments. This can inform your decision-making as to whether to pursue the claim.

Nonetheless, a degree of perseverance can reap rewards. If you do decide to pursue your claim, you have two choices: the DIY approach or using a solicitor/debt recovery agency.

The DIY approach

The prospect of dealing personally with the recovery of money owed to you may seem daunting, but nowadays there are facilities available for you to do so without necessarily requiring professional help.

Before starting the formal process of debt recovery, it is important to send your debtor a letter before action (aka letter before claim) setting out the nature of your claim and stating your intention to take legal action to recover the money owed to you. This shows the seriousness of your intentions and offers your debtor a final chance to settle the debt now before legal action is commenced. In many cases, this letter will prompt the debtor to pay you quickly. Sample letters are available online.

However, if you do not receive payment or a satisfactory response within the time granted in the letter before action (typically seven days), the next stage is to make a court claim. The relevant forms can be downloaded from the HM Courts & Tribunals Service website and printed off, but it is much simpler (and less expensive) to use the Money Claim Online facility², for which you will need to be registered on the UK Government Gateway.

Court fees start at £25 for a claim of up to £300 and are graduated according to the size of the debt. Don't forget that this amount can be recovered from the debtor but in

the meantime you yourself will have to pay the fee upfront.

Once your claim form has been filed with the court (either by post or electronically), the debtor will be served notice of the claim and will have 14 days in which to respond. In the best case scenario, the debtor will accept the claim and pay up immediately. They may, however, accept only part of the claim or even deny the claim entirely. In these situations, you may end up having to go to court in person.

It is not uncommon for debtors to continue to bury their heads in the sand by ignoring the court claim and failing to respond within the 14-day period. It is at this stage that you can apply to the court (for a small fee also recoverable from the debtor) to enter judgment in default, which means that you have effectively won the case because the debtor has not defended the claim.

The judgment will be recorded against the debtor's name in the Register of Judgments, Orders and Fines and will remain on record for six years. This is bad news for an individual or a company because banks and other lenders search the register when making decisions on whether to lend money or give credit, and the general public can also consult it. If the debtor pays up in full within one month, the entry can be removed from the register. Good news for you and for the debtor too.

Using a solicitor, debt collection agency, etc

If you are not comfortable with pursuing the claim yourself, you can always turn to professional help. A solicitor or debt collection agency can take all of the trouble out of your hands and leave you to focus on the money-earning side of your business. They have vast experience in dealing with disputed and undisputed claims and can process your claim quickly and efficiently through the appropriate channels.

There are two further benefits of using professional help: firstly, a debtor might be prompted to take your claim more seriously when receiving a letter from a solicitor/debt collection agency and therefore pay up more quickly; secondly, if it is not you who are pursuing the debt but

OVERSEAS DEBTOR?

Even for highly skilled linguists such as ourselves, the thought of claiming money from a debtor based overseas can be unnerving, given the different legal systems and processes involved. Thankfully, the process has been greatly simplified in recent years at least with respect to debtors resident in the European Union. It is now possible to make a 'cross-border' claim either by means of a European Payment Order or by following the European Small Claims procedure. Forms are available on the European e-Justice Portal³. For non-EU countries, there may be reciprocal agreements in place, but the best advice would be to contact a debt recovery company operating in that country.

an external professional, you may be able to continue your working relationship with the client in the future... not that you would really want to, I suspect!

Obviously, solicitors and debt collection agencies charge for their work. The initial consultation will often be free of charge but fees will start to apply for all subsequent intervention, either in the form of a fixed sum or as a percentage of the amount recovered. Professional fees, including court fees, are commonly staggered according to the value of

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the debt and will need to be paid upfront. It is understandably a concern having to add to your debt before you can recover it, so it is important to liaise with the solicitor/debt collection agency about the likely prospects of success. It's worth reiterating that these professional costs can also be reclaimed from the debtor so you will get these back, plus interest, in the event of a successful recovery.

Timescale

It is impossible to say how long the process of debt recovery will last. Court processes are not always the quickest! The whole process from start to finish can take months (and in some cases years) depending on what stage the debtor pays up and whether or not the debt is disputed so it's very important not to delay as it becomes harder to get your money as each day passes.

Enforcement

Unfortunately, even if you are successful with your claim in court, whether by default or through judgment being given in your favour, the debtor may still be unwilling or unable to pay. In the latter case, you may ultimately receive nothing or little from the debtor if they have no money or saleable assets. If the debtor does have money or assets, there are a number of options available depending on the circumstances and the debtor's status. These include instructing a bailiff or high court enforcement officer to collect money or seize goods, as well as third party debt orders, attachment of earnings and charging orders.

Help available

I know, from personal experience, that recovering debts is time-consuming and stressful. There is much you can do on your own initiative, but it is always advisable to seek advice from the outset so that you can make fully informed decisions. If you have any questions about debt recovery (or any other legal issue), call ITI's Legal Helpline⁴. Towergate also offers legal expenses cover to ITI members (see page 4). While ITI is unable to become involved in individual disputes or cases of non-payment between members or between members and non-members, it can and does provide advice and support where a consistent pattern of fraudulent activity emerges affecting large numbers of ITI members.

Good luck! (I hope you won't need it...)



¹ www.truonline.org.uk

² www.moneyclaim.gov.uk

³ <https://e-justice.europa.eu>

⁴ Details available under My Benefits in the My ITI section of the ITI website