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PROBLEMS WITH DEBT

What should you do if someone owes you money?

The first thing you should do when someone owes you money is to speak to them to find out why they haven't paid. After all they may have simply overlooked it.

If they're struggling to pay you back, you may be able to negotiate some kind of payment arrangement which keeps the relationship amicable.

If they simply won't or can't pay you should see your solicitor, who will advise you on what course of action you should take, based on the estimated cost and your likelihood of being paid back.

If the debt is more than \$1,000 your solicitor will ask the debtor to pay interest as well as your legal costs. Interest will keep accruing on their debt until they pay it.

Your solicitor will tell you the amount you should be able to recover.

That said, the first thing your solicitor will probably do is to write a letter of demand. Often just receiving one of these is enough to make someone pay.

What is a letter of demand?

You can send a debtor a letter of demand to allege that they owe a debt and advise that if it's not paid within a certain period of time (usually 14 days), you'll begin legal action.

If you receive a letter of demand you should pay your debt as soon as you can, to avoid also being charged interest and legal costs.

What if you don't owe the debt or can't pay?

If you don't think you owe the money, or if you're unsure, you should contact your solicitor as soon as possible so that they can dispute the debt and try to prevent court proceedings from starting.

Even if you do owe the money, your solicitor can help. For instance, they may be able to negotiate with the creditor to come to some kind of arrangement, such as paying by instalments. After all, most people will be more interested in recovering their money than punishing you.

If the claim against you ends up in court and you lose, you could be liable for interest as well as the legal costs your creditor spends recovering the money from you. So it's usually in your interest to negotiate before it goes to court.

How do legal proceedings start?

To start court proceedings a solicitor will file a Statement of Claim. If someone serves you with one of these, you shouldn't ignore it. If you do, the creditor can apply to the court for a judgment against you. You usually have 28 days to take action after someone serves a Statement of Claim on you.

The good news is that it's still not too late to pay your debt. You can admit you owe the money and apply to the court to pay by instalment. But if your creditor doesn't agree to the terms you've proposed, the claim will end up in court.

If you don't owe the money, you can defend the claim. Your solicitor can lodge a defence on your behalf, which sets out your reasons for disputing the debt. You may also choose to make a counter-claim against the creditor, for instance if the work wasn't performed or if you received defective goods.

If you choose to go down this route, the court will fix a day for the hearing.



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How does the hearing work?

Before the hearing the court needs your evidence in writing. You should also include a written statement from any witnesses who can support your case. Your solicitor will help you prepare these documents.

Once the hearing starts, the court will give both the creditor and debtor a chance to have their say. The court is likely to ask you questions based on the information you provide before coming to a decision. If the amount in dispute is over \$10,000.00 then you will also be required to give evidence in the witness box and be cross-examined.

Generally, when the court rules in favour of the creditor, the debtor also has to pay the creditor the judgment debt immediately and will often have to pay their legal costs too. However, a debtor can sometimes arrange to pay by instalment.

If the debt isn't paid within 28 days, the debtor will have to pay interest too.

What happens where someone doesn't pay a judgment debt?

If you don't pay a judgment debt (or if someone who owes you doesn't pay) the court has a number of options.

- It can make you return to court to explain your financial position (in which case you risk being declared bankrupt).
- It can issue a garnishee order, in which your bank or employer must remove payments towards your debt from your salary or other payments.
- It can order an officer of the court to seize your goods and sell them to raise the money to pay the debt.

So long as you don't pay the debt, you remain liable for interest on the outstanding amount as well as the creditor's legal costs.

How can a solicitor help?

If you owe money – or if someone owes you – there are many ways a solicitor can help. Here are just some of them:

- Advising you on the best course of action for recovering a debt
- Advising you on how to dispute a debt
- Negotiating a payment arrangement on your behalf
- Advising you on making a counter-claim or applying to pay by instalment
- Running your claim, or defending it, in court.

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