Help and advice

Legal advice for bosses

## Ben Hopps on collecting debts (part 2)

# Be pushy? You're more likely to get paid!

CASH management, debt collection, credit control – call it what you want but it still means the same thing, getting your customers to pay in good time.

Most businesses are honest in their dealings whilst some will push the boundaries forcing you to take action.

Last month we covered the initial steps as well as the further action that can be taken. However, you may have to resort to using the law for the recalcitrant.

■ **Legal action:** If despite all the efforts you have made the debt has still not been recovered, you then need to consider whether to take more formal legal action.

An important feature is whether it is worth spending money on going down this route which is likely to involve the use of solicitors, or possibly some debt collecting agency , or whether you will simply be throwing good money after bad.

This will depend on matters such as the amount outstanding and your assessment of the financial position of the debtor, the likelihood of recovery and, weighed against this, the likely cost. It is worth making enquiries about their status.

For a simple debt claim you might wish to complete the claim form, submit it to the appropriate court and deal with it yourself.

However, you may prefer to leave this to a solicitor who has experience in this field, because although in theory the process can be simple, in practice there are often administrative and other pitfalls for the unwary.

There is a court fee which depends on the amount being claimed and which starts at £30 for claims up to £300. If the claim is less than £5,000, this is treated as a small claim and therefore you would not normally recover legal fees other than very limited fixed fees.

If the debtor does not defend the claim you should be able to apply for judgment in default. This judgment would then need to be enforced.

Bankruptcy or liquidation of the debtor is where you can get into more serious levels of fees, and these steps should only be taken with professional advice.

You would need to be reasonably certain that the debtor has the means to pay.

The key is acting quickly and firmly, which will prevent the level of debt rising to a level where you are putting your own business at risk, look out for warning signs and to take immediate action as soon as you can see there is a problem occurring.

If there is sufficient at stake then it will justify the use of solicitors, but in many cases you will be able to apply pressure by using some of the techniques outlined above, and to show that you are serious.

You need to be pushy to make sure that you are more likely to be paid. Remember, the debtor is likely to have other debts and you want to put yourself at the top of the priority payment list.

You do, of course, have to bear in mind that the commercial reality of whether you want to potentially alienate what may be good or large customers, but then ultimately if they do not pay, or are so slow in paying that your business is at risk, are they good customers? **CFJ**

**Ben Hopps is a solicitor in the commercial litigation team at Sykes Anderson LLP**

## Peter Allan on exporting

# Getting overseas customers to pay up!

THE UK credit crisis is dire, oil prices hit a record $147 a barrel this year and the effects upon the economies are evident around the world and locally. Just watch the colour drain away from car owners faces as they fill up their tanks!

And it is not just petrol. Energy charges are also heading for record increases. The effects upon manufacturing are equally worrying and the flooring industry will also have to cope with substantial increases in energy charges.

As businesses work towards the end of the calendar year and annual price reviews, I wonder what fate will be in store for raw materials with a relationship to petroleum derivative?

Unfortunately times ahead look tough in this country and businesses need to review opportunities and activities. Clearly in established markets where brands have a dominant market share, market conditions will dictate.

Thankfully, in new and emerging markets, there are opportunities to grow and generate sales in countries that are less affected.

Ensuring payments from international customers can be tricky, and a consideration that will never change is to guarantee payment from sales within the export market.

The old saying is never truer: 'An order is never an order until you're paid'.

**Here are some tips to help with the export cash flow:**

■ Insure against non-payment of export invoices with a specialist provider or arranging for your bank to take over the risk (e.g. discount your export sales ledger).

■ If you have the slightest concern over your potential customers' ability to pay , try to negotiate payment up front; or, if it is a big project you are working on, at least ask for stage payments.

■ If you know your buyer well, arrange an open account whereby you invoice and they pay you within a stipulated timeframe.

■ Consider a payment against delivery arrangement with your customer, which gives you more security until you are able to establish a relationship.

■ Alternatively, ask for a letter of credit from the customer's bank – which effectively means their bank guarantees the payment. Beware, however; that over 50% of letters of credit are turned down when first presented to a UK bank, usually because of documentation failures.

■ If you require further reassurance on a customer's financial security, the British Chambers Of Commerce can help trace companies in the UK and worldwide. For a small fee, BCC can also conduct press searches on companies or personalities, and can provide credit ratings or in-depth financial accounts for a UK or international company.

■ Familiarise yourself with settlement terms as they vary greatly from country to country (e.g. 30-60 days in Germany and Norway, 90-120 days in Greece and Turkey, and 120-150 days in Uzbekistan).

■ Local offices of the government UK Trade Links are a useful and experienced reference point to discover the wide range of payment terms, conditions and risks associated with international trade.

■ Sometimes problems do happen and while it is possible to take legal steps for debt recovery, in foreign countries it can be costly and run over a long and frustrating period of time.

■ Consider the exchange rate risk. Exporting obviously makes you prey to exchange rate fluctuations. There are a number of ways you can protect against currency fluctuations. If you match your income received in a particular currency by your expenditure in that currency, you can offset any adverse financial implications.

■ Another rising trend of UK exporters is to borrow money in the currency of the country to which you are exporting – this is particularly effective in the Eurozone (the 12 countries participating in the euro) with its low interest rates.

Remember the memories of a bad debt seem to last longer in the corporate corridors... . **CFJ**

**Peter Allan is business manager for international sales at Burmatex & Ryalux**

Further information on
■ T: 01943 462389