



**Ben Hopps on collecting debts (part 1)**

Legal advice for bosses

# Getting what you're owed in a tight market

CREDIT control is key for any business regardless of economic conditions. However, in these infamous 'credit crunch' times with an uncertain outlook acting quickly can prevent unpaid bills becoming bad debts.

In this article I give some guidance on debt collection with a combination of well trodden techniques and some tricks of the trade.

■ **First steps:** Follow up on any debt as soon as it is not paid on its due date. As you do this, look for changes in payment patterns e.g. if the debtor takes longer to pay than they did previously.

Beware extending credit beyond a level you are comfortable with. If it is feasible for your business, make credit checks on the customer and take up references and see if these are genuine. Whatever you do, telephone the debtor; don't simply send out reminders. People are more likely to pay and less likely to come up with excuses for not paying when they are being hassled on the telephone.

You will also get a better idea of whether you are likely to get paid, whether the debtor is genuine, whether they might be in trouble, or whether they are looking to avoid payment.

■ **Further action:** You are entitled to charge interest on outstanding amounts. Your standard terms of business should provide for interest to be payable on late payment. This must not be so high as to be considered to be a penalty rate of interest, but if you stick to around 8% this should be fine.

You can also claim compensation and interest under the late payment of **Commercial Debts (Interest) Act 1998**. Under this Act, business owners and managers can claim reasonable debt recovery costs and following a 2002 amendment can benefit from the simplification of the calculation of statutory interest.

Additionally small and medium sized enterprises can ask a representative body to challenge grossly unfair contract terms used by their customers which do not provide a substantial remedy for late payment of commercial debts.

The compensation due to you varies in accordance with the size of the debt: a debt under £1,000 attracts compensation of £40, between £1,000 and £9,999, £70 and £10,000 and over, £100.

The interest you can legitimately claim varies depending on when the debt was first incurred but can be as much as 13.5% from the date the payment fell due to when it is paid. It can be difficult to charge interest in practice, but sometimes you need to use whatever weapon you can to put pressure on the debtor.

You should also consider a seven day letter. You can send a letter threatening to issue court proceedings if the debtor does not pay, typically, within seven days.

To be more effective, this would need to come from a solicitor but you are then starting to incur additional costs. Even then, whilst this is a step worth taking, it will probably not carry the weight of sending a specimen court claim form or a serving a statutory demand.

You can download a specimen court claim form from a government website: [www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

This is fairly simple to complete. You can then write to the debtor attaching a copy of the draft claim form saying that you are ready to issue proceedings and will do so unless payment is made immediately. You must consider whether you will issue a claim if your bluff is called, but this can be effective.

■ **A word of caution:** You need to be very careful that you make it clear that a claim has

not been issued, and that the form is simply in draft, otherwise misrepresenting that this is some official court paper could get you into trouble.

One of the most effective methods of putting pressure on a debtor who has the money to pay you but chooses to put you lower down the list of priorities is to serve a statutory demand.

The debt must be for £750 or more. These demands are effectively a warning that unless the debtor pays within 21 days you will take bankruptcy or liquidation proceedings against them. There are different forms, depending on whether the debtor is an individual, a partner or sole trader, or whether the debtor is a company.

You can download the forms from another government website: [www.insolvency.gov.uk](http://www.insolvency.gov.uk).

There are some formalities to be considered and the form should be dated and signed. For a company, the form should be sent to the registered office - this can be checked on the Companies House website:

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

It is suggested that a copy is also sent to the trading address, if different. For an individual, strictly speaking, the demand should be served personally, but initially you may simply want to post it to them as a practical and cheaper option.

Please remember that this is higher risk strategy and you must be absolutely certain that the debt is due and that the debtor has no grounds to dispute it.

If the debtor disputes the debt, they can apply to the court for it to be set aside, which could involve you in having to pay their costs. If you are satisfied that the debt is undoubtedly due, this is a highly effective tactic. **CFJ**

**Next month: Taking legal action.**

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## THE GLUES BROTHERS by Bob Lawton

