

Plan, Protect, Recover – A guide to late payments

Commercial Litigation
Business Law

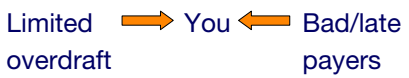


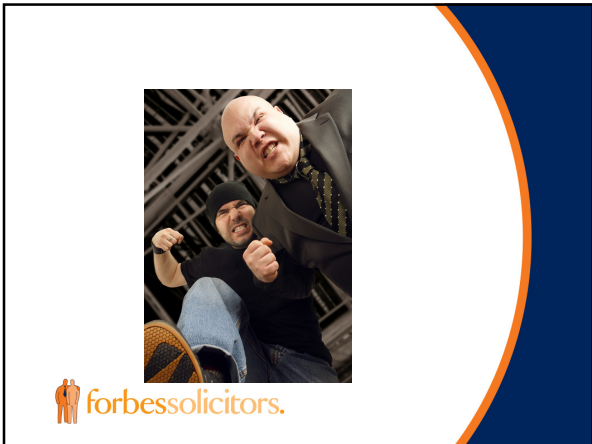
Putting yourself in the best possible position when a late payment arises

Robin Stephens
Commercial Litigation



Credit Squeeze





Free Stuff!

Forbes Debt Collect Toolkit

- Late payment interest and charges
- Interest at 8% above base
- Debt recovery charges
 - £40 up to £1,000.00
 - £70 up to £10,000.00
 - £100 over £10,000.00



Illustration

- £3,950.00 over due 60 days
- Claim:
£3,950.00 plus £81.16 interest plus
£70.00
= £4,101.16



Identifying the Debtor

What are the options?

- Sole trader/individual
- Partnership
- Limited Liability Partnership (LLP)
- Limited Company (Ltd or plc)
- Unincorporated Associations



Practical Points

- Have customer complete credit application forms
- Make sure orders and acknowledgements are documented
- Double check through public sources
- Update details regularly



Offers of Settlement

- Beware the "full and final" settlement offer
- Don't cash a cheque tendered in full and final settlement without advice
- Make a counter offer
- Make sure settlements are properly structured e.g. consequences of default



Planning for Maximum Recovery

Daniel Milnes
Business Law



Making Your T and C Work

- Making your terms part of the contract
 - Publication and awareness
 - Inclusion in offer and acceptance
 - Industry standard or course of dealing?
- The Battle of the Forms
- Or scope to negotiate?



Price Adjustments

- Are you in a fixed-price contract?
- Is a price change formula possible?
 - Whole price list on timing
 - Indexation of all or part
 - Index or Fix?
 - Price matching
- DIY Hedging



Retention of Title

- Aka *Romalpa* clauses
- What does it do?
 - Ownership stays with seller
 - Risk moves to buyer
 - Take back the goods if not paid
- Specific or “all goods/all monies”?
- Allow sales by buyer?
- Enforcement



Late Payment

- Interest
- Extra charges
- Late Payment of Commercial Debts (Interest) Act 1998
- Other Contractual Remedies
 - Retention of Title
 - Suspension
 - Loss of Credit
 - Termination – cut your losses



Guarantees

- Company or Personal?
- Backed?
- Key Terms?
- Who signs?



Methods of Recovering Late Payments

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Options to Recover Late Payments

- Threaten insolvency; winding up or bankruptcy
- County Court proceedings
- Others? E.g. Distress for unpaid rent



Insolvency

Different methods

- If individual – Bankruptcy
- If company – Winding up



Insolvency

Individual

- Serve statutory demand
- 18 days to apply to set aside
- After 21 days can present bankruptcy petition
- Hearing
- Trustee in bankruptcy appointed
- All property vests in trustee
- Realisation and distribution



Insolvency

Individual

Application to set aside. IR 1986 r 6.5

- a) Counterclaim, set off or cross demand which equals or exceeds the demand
- b) Disrupted in "substantial" grounds i.e. which has a "real" prospect of success
- c) The debtor holds some security, and the security equals or exceeds the debt
- d) The court is satisfied in other grounds the demand should be set aside



Insolvency

Individual

- Where then?
- County court



Insolvency

Company

- Serve statutory demand
- No “set aside” procedure. Injunction
- After 21 days can present winding up petition
- Serve
- Advertise in London Gazette
- Hearing
- Liquidator appointed



County Court

Objective

- To get **judgment** for fixed sum, which can then be enforced



County Court

- Preaction
 - CPR
 - Protocols
 - Letter of Claim



County Court

Central Features

- Costs – fixed or assessed
- Default/Summary Judgment
- Setting aside default judgment



County Court

Procedures

- Issue of Claim
- Service of Claim
- Response to Claim
- Defendant cases
 - Defence
 - Case management
 - Allocation



Enforcement

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Enforcement

5 main methods

- Charging order on property
- Attachment of earnings
- Third party debt order/receiver
- Seizure of goods
- Insolvency



Enforcement

Charging Order

- If debtor owns or has interest in land, or other securities
- Do a search e.g. HM Land Registry
- Gives security for the debt
- Procedure – Interim application with evidence and final orders
- Can be defeated if debtor becomes insolvent **before** order is made – requirement to give notice to other known creditors



Enforcement

Attachment of Earnings

- If debtor is employed
- Minimum below which wages should not fall
- Problems if employment changes
- Employer deducts sum from wages



Enforcement

Third Party debt order/receiver

- Used where the debtor is owed money by a third party
- Most commonly used where debtor has money in bank or building society, but can be used for other debts
- Similar procedure for charging order – interim application with evidence notice and final order



Enforcement

Seizure of Goods

- Can be County Court or High Court
- Allows HCEO to attend and seize goods, which are sold at auction
- HCEO's will do necessary work to transfer case
- Main issue is disputes about ownership e.g. Leased goods



More Free Stuff!

A free pre litigation letter from Forbes Debt Collect

– worth £17.50 plus VAT



Questions?