

A CREDIT TO YOUR COMPANY

FALLING FOUL OF BAD DEBT CAN BE DISASTROUS FOR UK FIRMS. BUT **NICHOLAS JOHNSON** OF GLAISYERS SAYS IF THEY TAKE THE NECESSARY LEGAL STEPS BEING STUNG BY POOR CREDIT CONTROL MANAGEMENT CAN BE EASILY AVOIDED.

It is not unusual in a climate of economic uncertainty for a business to focus on the terms upon which credit is given, goods are supplied and the management of such credit. Businesses that fail to manage such matters can often be a victim of a bad debt which can be disastrous.

KNOW YOUR CUSTOMER. Before a business agrees to supply goods and provide credit it's crucial that it has carried out a detailed review of its customers and has in place terms and conditions of trading.

Never underestimate the need to obtain information on a prospective customer. As a starting point, particular attention should be paid to the status of the prospective customer. Are they a limited company or will liability of any such debt ultimately rest with individual owners? If it is the latter, the names of the individuals who own the firm should be obtained, ensuring that their home address, as well as the trading address, is recorded. This information is always important in the event that the firm ceases to trade, as there is information which will allow steps to be taken to recover the debt against the individual owners.

All too often, money is wasted in pursuing debts because there is uncertainty as to the identity of the customer. As well as the financial costs, any delay can be detrimental to the recovery of the debt. Timing is of the essence.

Consideration should be given to obtaining trade and credit references, and there are a number of agencies which can assist in this matter (such as, Dun and Bradstreet the credit reference agency). Steps can be taken to obtain independent information. Writing to a customer's other creditors, including their bank, to obtain a reference can be illuminating. However, always treat with caution the accuracy of any response.

If necessary, obtain office copies from the Land Registry on any address provided by a prospective customer to ascertain the true owner of the property. This will assist in identifying whether there is sufficient equity in a property if it becomes necessary to issue Court proceedings. As part of these proceedings it may then be appropriate to apply for a charging order in the event a judgment is not satisfied. This allows further steps to be taken to obtain an

order for sale of the property with a view to releasing money for the payment of the judgment.

This information can be easily obtained once procedures have been put in place and without any significant costs. In a climate where many customers are evading payment, such information can be invaluable in tracing an individual and deciding what is the appropriate method of enforcement.

GET ON THE RIGHT TERMS. It is always good practice to transact business using terms and conditions that have been specifically drafted for that particular type of business. While such terms and conditions do not avoid bad debts they do significantly reduce the risks. If businesses are not using appropriate terms and conditions then they should seriously consider the need to do so.

While it is appropriate for any terms and conditions to reflect the nature of the business there are certain clauses that should always be included. In particular, consider the need to have a retention of title clause. This can be of the utmost importance when dealing with a company that is going into liquidation or is experiencing cashflow difficulties. Such a clause provides a business with the opportunity to recover the goods it has supplied to the customer and not sold, and can often help the business to reduce its exposure to bad debts. As with all business contracts, a retention of title clause is not worth the paper it's written on unless is professionally drafted by a legal expert. Failure to do so can result in it being unenforceable.

In conjunction with any retention of title clause, a business must issue invoices to its customers which allow the goods supplied to be easily identified with reference to the invoice. Failure to do so can result in a business being unable to distinguish its goods from those supplied by other businesses and therefore prevent recovery.

Consideration should also be given to ensure that a business has terms and conditions which allows a claim for interest and costs incurred when taking steps to recover the debt. It is often the case that a business may instruct a solicitor to take action to recover a debt prior to proceedings being issued and costs are incurred. There is a risk that such costs will not be recoverable in the event that there is no provision within such terms and conditions.

The Late Payment of Commercial Debt Regulations 2002 finally came into force on 7 August this year in relation to all businesses and public sector organisations. They implement the most recent EC directive on the subject. The regulations provide a statutory right to claim interest at a rate of 8% above the bank of England base rate. It may well be that the existing terms and conditions do not provide for such a rate and therefore need reviewing.

In the event that a business provides terms and conditions, it is necessary to ensure that they have been properly incorporated into the contract. Where terms and conditions are on the back of an invoice and there has been no previous dealings with that customer, such terms will not be deemed to be incorporated into the contract. Therefore, a business needs to review the manner in which orders are placed and ensure that the customer acknowledges that, in accepting the order, their terms and conditions of business will apply.

WIN THE WAITING GAME. Having supplied goods and provided credit a business needs to then focus on the management of credit. If payment is not received within the terms of credit then notice of late payment should be given. Within that letter a customer should be given 14 days within which to pay. In the event that payment is not received within this period, a further letter should be sent indicating that if payment is not made within seven days legal action will be taken. Unless there are good commercial reasons there should then be no delay in taking such action.

It is often the case that customers are experiencing temporary financial difficulties and arrangements are made to accept payment in instalments. However, in the event that the customer does not keep to such proposals, or ignores correspondence, then

delaying action to recover a debt can be to the prejudice of the business.

A business needs to ask itself that if the customer fails to keep to its promise, is it justified in delaying in taking action for recovery of the debt. Probably not, as the customer is likely to be avoiding payment. If a customer is genuine then there is no reason it should not respond to correspondence chasing payment and justify its position.

In the event that a customer is experiencing financial difficulty then consideration needs to be given to asking for financial information before deciding to give time for payment. Often, a customer is given time to pay when their financial position does not justify such indulgence.

DON'T DELAY. Delaying the debt recovering process can often lead to non-payment. A customer faced with a business it knows manages its debts efficiently will often give it priority. A business which pushes for payment is often paid by a customer who may be experiencing financial difficulty over another business.

In an uncertain economic climate, all companies must run an efficient and well-administered credit control system, in which careful attention is paid to the basis upon which credit is provided and to whom it is granted. Making sure the legal parameters of the relationship between business and client or supplier are established is the key to avoiding a disaster waiting to happen.

Nicholas Johnson is a Partner and Head of Commercial Litigation at Manchester law firm Glaisyers.

nrj@glaisyers.com
www.glaisyers.com