

Title:

Debt Collection Facts

Word Count:

1036

Summary:

This article contains valueable information about debt collection. It talks about some of the issues that affect the debt collection procedures, how to prepare yourself and what you should expect from your legal advisers.

Keywords:

debt collection solicitors,london,debt collection,recivery, solicitor, lawyer

Article Body:

<h1>Debt Collection Facts</h1>

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<p><i>This article is intended to be a brief general guide only and should not be used or relied on as </i><i>a complete or authoritative source of legal information.</i></p>

<h2>INSOLVENCY PROCEDURES</h2>

<p>The insolvency procedures open to a creditor are a powerful tool in recovering debts. Whether the debtor is a company or an individual, an intelligent application of the insolvency rules can enable a creditor to obtain payment of their debts without the need for protracted and costly litigation.</p>

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<p>The insolvency rules can be used for a broad range of debts exceeding £750 provided that the debt is not genuinely disputed by the debtor. Insolvency procedures however can be a high risk strategy and one needs to be very careful in using these procedures. There are substantial adverse cost consequences where the procedure is incorrectly used. </p>

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<h2>GUARANTEE</h2>

<p>It is often the case that debts that are difficult to collect from the debtor company are as a result of inadequate checks being made as to the financial strength of the company when the contract was entered into. It is therefore essential that you should check the credit rating of any potential new customer or client and where there is concern as to the ability of the company to make payment for goods or services supplied, then you should obtain a guarantee either from a parent company of sufficient financial standing or an individual to ensure performance of the contract. </p>

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<p>It is essential that any guarantee is documented in writing and clearly places the guarantor under a binding and contractual obligation to meet the liabilities of the company or individual if they default in meeting their contractual obligations. It is essential that the wording of the guarantee is well drafted as the courts tend to construe the terms of a guarantee strictly and will only find that there is a third party liability if it is quite clear from the wording of the guarantee. </p>

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<h2>INTEREST</h2>

<p>Where a debtor has failed to pay you monies for goods or services supplied, it is normal to charge interest for late payment. Interest can be charged either in accordance with your terms and conditions of business provided your terms make provision for this or, alternatively, you can apply the Late Payment of Commercial Debts (Interest) Act 1998 which allows you to claim interest on overdue accounts. If the contract with the debtor predates 7th August 2002, then businesses that are eligible to charge interest can do so at a rate of 8% above the Bank of England base rate that was in place on the day the debt became overdue. For contracts dated on or after 7th August 2002, all businesses can charge interest at a rate of 8% above the late payment reference rate.

The Bank of England base rate on 31 December, is the "reference rate" for debts becoming overdue between 1st January to 30th June each year.

The Bank of England base rate on 30 June, is the "reference rate" for debts becoming overdue between 1st July to 31st December each year.</p>

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RETENTION OF TITLE

A well drafted set of terms and conditions of business will include a retention of title clause. The effect of such a clause enables a seller of goods to retain ownership of the goods supplied until payment has been received in full. This can be of great value where the purchaser of the goods supplied becomes insolvent.

There are various types of retention of title clauses but the essence of a well drafted clause means that a seller will have added protection in the event of failure by the purchaser to comply with their contractual obligations and pay for the goods ordered. In particular where a buyer subsequently goes into liquidation after acquiring stock which is subject to a retention of title clause, then the seller of the goods may be able to obtain the return of the goods notwithstanding the fact that the buyer has gone into liquidation.

A carefully drafted retention of title clause is a powerful tool to assert ownership rights and recover property. They can however be complicated and need careful consideration.

TERMS AND CONDITIONS OF BUSINESS

One of the major reasons that clients have difficulty in recovering their debts is because they either have inadequate terms and conditions of business or they in fact fail to have any written terms and conditions of business.

Although terms and conditions will vary from one business to another and from one industry to another, certain key areas are common to all businesses and need to be addressed in your terms and conditions. Your terms and conditions should :-

<p>- Ensure that the customer or client's details are correctly shown.</p>

<p>- Make clear whether you are dealing with an individual, a partnership or a limited company.</p>

<p>- Set out what services or goods you will be supplying.</p>

<p>- Clarify when payment is due.</p>

<p>- Make provisions to protect you if for good reason you are unable to supply the goods or services or only part deliver the goods or services or if faulty goods or inadequate services are provided.</p>

<p>- Ensure that you retain ownership of goods until payment in full is received.</p>

<p>- Make clear any additional charges that may be payable if the customer or client fails to pay in accordance with the payment terms. In particular the right to claim interest and the right to claim for collection costs and solicitor's fees should be clearly set out in the terms and conditions.</p>

<p>- Ensure you comply with all statutory requirements. </p>

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<p>A well drafted set of terms and conditions will make collection of a debt substantially easier.</p>