

## CHASING BAD DEBTS

Overdue and bad debts are always a problem for businesses, and have become more so since the recession began. Here are some points that may help you when chasing payment:

### 1. Prevention is better than cure

Make sure you do your homework before you supply goods on credit. Carry out credit checks and ask for trade references, but remember that you need an individual's permission before ordering a credit check on him/her. Permission is not needed for a company, or if you are considering suing an individual.

Also, make sure your terms of trade allow you to charge interest for debts that are overdue by more than a week or two.

Before supplying goods or services, you should think about registering a charge in the Personal Properties Securities Register, asking for a guarantee, or getting some other form of security for payment.

### 2. Chasing an individual

The action you take will depend on the amount involved, the customer's history with you, and whether you have any security for the debt. If the customer has been a good customer in the past, you may be able to work with the customer and arrange monthly repayments to pay off the debt. Otherwise, there are a number of options. Sometimes, a lawyer's letter of demand is enough to force payment. If the debt is not big enough to warrant involving a lawyer, you may threaten to refer the debt to a credit rating agency, which will make it hard for the customer to obtain loans or credit in the future, or you may refer it to a debt collector. If the debt is reasonably large, and you are confident that the customer has the ability to pay, you could commence court proceedings against the debtor, or apply to the court to make the debtor bankrupt.

### 3. Chasing a company

If you do not have security for the debt, the usual first step to put pressure on the debtor is to issue a statutory demand, which is a notice requiring a company to pay a debt within a certain time period. If the debt is not paid before the notice expires, an application can then be made to put the company into liquidation. A statutory demand can only be served if the debt is not disputed. Ordinary Court proceedings can also be used.

### 4. Can money be recovered from trusts?

Sometimes, a debtor may have gifted assets to a trust. If the person was technically insolvent at the time the gift was made, or if the gift was made with the intention of defeating a creditor's claims, it may be possible to get a Court order that the gift be reversed.

This is a very brief summary of options available to try to recover a debt, and your lawyer will be able to discuss the best option for you in any particular situation.

*This information is for general background information only and is not legal advice. You should obtain your own legal advice if you are considering making an offer to purchase this property.*