



## briefing

debt recovery - july 2008

### Don't let debtors drag you down

**Against a backdrop of continuing uncertainty in the financial markets, credit control and debt management has become a business critical issue, argues Liz Hope, head of Morgan Cole's Swansea-based recoveries team.**

At the outset of any business relationship careful credit checks and tight terms and conditions will pave the way for a successful - and profitable - relationship.

Unfortunately, however well you think you have prepared for this, there will always be those who, for various reasons, do not pay on time.

What then? In our experience the newer the debt the greater your chance of repayment so make contact as soon as the debt becomes overdue. This will sort out two things

Ideally, it will lead to the payment of the debt if possible and secondly it will provide early notice of any reason why payment will not be made.

As debtors tend to fall into two categories - they either can't pay or they won't pay - also find out which category your debtor sits in as these are best approached differently.

Can't pay? No, you can't get blood out of a stone whatever you threaten to do.

So, consider agreeing settlement at a reduced figure or payment by instalments. If possible, explore whether any security can be provided by the debtor – corporate or personal – if you don't ask you don't get, goes the old saying.

Won't pay? Then establish if there is a justifiable reason for this and check out any complaints etc. If there is no justifiable reason then take a firm line. At

this point the importance of clear and agreed contractual terms becomes important.

All too often we find clients have either used terms and conditions which are defective or out of date or worse have failed to establish that they have been accepted by the debtor.

If those hurdles are overcome then now is the time to state your claim for interest on the late payment.

If you do not have contractual terms for payment of interest then you could still apply the Late Payment of Commercial Debts (Interest) Act 1998 to any business to business contracts for the supply or sale of goods or services.

This allows you to claim interest at 8% above the Bank of England base rate plus a compensation fee for the administrative burden of pursuing the debt.

Still not paid? Then you should consider taking further action. A "Letter Before Action" from a firm of solicitors often has a sobering effect on debtors.

And if they still won't pay? Then consider formal process. This could be County Court proceedings or even insolvency action if that's appropriate. Prevention is always better than cure and we have specialist commercial lawyers who are experienced in drafting conditions of supply and purchase

Liz Hope is an experienced commercial dispute lawyer and is the manager of the recoveries team based in Swansea. Liz joined Morgan Cole from a position as senior legal manager within Barclays Bank Plc based at its Business Banking Debt Recovery Unit in Cardiff. Prior to this, Liz was the Prosecuting Solicitor and Assistant Director of Compliance at Companies House. Liz also previously worked in commercial litigation and debt recovery in private practice.

If you would like further information on any of the above, please contact Liz Hope Recoveries Team Manager via email or telephone on 01792 634565.



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Liz is an experienced commercial dispute lawyer having specialised for the last 10 years in all aspects of debt recovery.

As the Manager of the Recoveries Team based in Swansea, Liz designs credit control and debt recovery processes for major clients and implements those procedures via service level agreements with her team.

Liz joined Morgan Cole from a position as senior legal manager within Barclays based at its Business Banking Debt Recovery Unit in Cardiff. Prior to this, Liz was the Prosecuting Solicitor and Assistant Director of Compliance at Companies House.

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