



(Debt) Mountain Rescue

Dispute Management - April 2010

A briefing from our Dispute Management team

Research released this month from Natwest and RBS revealed that nearly three quarters of SMEs have suffered from the late payment of debts over the last 12 months, and yet less than half of these SMEs have taken steps to address this problem.

The impact on cash flow, and the affect this can have on the SME's business, is not to be underestimated. 235,000 SMEs claim that time wasted chasing debts has adversely affected their business. The collective value of invoices paid outside of the agreed payment period in the UK is £62.87 billion and, whilst the larger companies may carry the larger debts, and when debts are viewed as a percentage of turnover, SMEs are the worst affected.

As well as the invoice discounting and factoring services offered by banks, there are other practical steps which can be taken to try and mitigate the problem and its impact, provided these are covered by your terms and conditions of trade.

A simple way to motivate debtors into payment is to offer a discount in return for early payment. When the cost of waiting for payment and chasing payment is factored in, a discount is an economical and straightforward option.

Alternatively, if this does not produce payment, you should protect yourself further against the cost of waiting for monies. Since August 2002, all businesses have had the right to claim interest on unpaid debts owed by other businesses, and claim fixed amounts of compensation for late payment, under the [Late Payment of Commercial Debt Act 1998](#) (subject to any alternative contractual arrangement). The UK was one of the first countries in the EU to implement such legislation, with the laudable aim of promoting a culture of prompt

payment. This aim has in part failed due to lack of knowledge of the statutory rights.

A right to charge interest under this Act is enforceable without specific contractual terms. However, it is best practice to ensure that your terms and conditions make mention of this legislation if you intend to rely on it, especially given the deterrent aim of the legislation and the preferential interest rate of 8% above base. You will also need to include terms to set out your right to claim interest if you are dealing with individuals not covered by the Act, or if you intend to claim a different rate of interest to that allowed under statute.

The right to interest should be enforced against debtors, and if possible, interest should be added automatically to the debt on your systems, to demonstrate that you are genuine in your intent to recover the sums and to highlight the fact that the debt will only increase whilst unpaid.

If your trade is one which involves you being in possession of the debtor's goods at any stage (as manufacturer or otherwise), you should also ensure that your terms and conditions allow you to exercise a lien over the debtor's goods until the debt is paid in situations where such a lien is permissible at law. Alternatively, if you part with goods before the debtor has paid for those goods, ensure that your terms include a retention of title clause, specifying that you still have title in the goods until they are paid for in full.

Reviewing your practices to ensure that you are able and ready to take the above steps should ensure that payments from debtors are forthcoming and you are able to concentrate your efforts on growing your business, rather than rescuing it from under a mountain of debt.

More information

To discuss your individual requirements, please contact a member of the Dispute Management team.



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