

TIPS ON NEGOTIATING AND ENFORCING CONTRACTS - NORTHERN IRELAND

1. Introduction

Inevitably, at some stage, when you run any business, you're going to encounter customers who are slow payers, late payers and those that simply won't pay at all. Cash flow is an integral part of your business, especially during a recession, so it's imperative that you keep these types of customers to a minimum and also know how to tackle them when they don't pay on time. We recommend that you follow the tips below to help you to achieve this.

2. Prevention

- Find out about your customer, and their financial position, before you agree to provide goods and/or services, thereby reducing the chance of slow/non payers.
- Ascertain whether the customer is a business or a Consumer (someone acting outside of a business). Not only do different types of customers have different rights, but there are also different procedures when chasing debts owed by them.
- This will help you decide whether or not to take them on as a customer, and give an indication as to whether you may end up having to take action to recover the debt.
- Ask yourself what you know about your customer? If you have no information, don't just take a chance. Surveys show that only 20% of businesses pay their bills on time so check them out! How long have they been in business? Have you done business with them before?
- If your customer is a business, request a bank reference, a trade reference, a credit reference, or a company search at Companies House etc. Check their identity. Never just accept a name and a mobile telephone number, or an email address. If they're a limited company or a limited liability partnership, double-check their details at Companies House. If you ever have to bring legal action, you will generally need a physical address in order to validly serve court papers.
- If they're an individual or partnership, double-check any address you're given. Make sure, too, that if you deal with a partnership, you check out all the partners and get confirmation from all of them that they're happy to enter into a contract with you.
- Always have terms and conditions in place so you have evidence if you need to pursue the debt.
- If you're dealing with a business customer who is a late payer, if there's nothing in your contract, the fallback position is that interest can be charged under the Late Payment of Commercial Debts (Interest) Act 1998.
- If you're dealing with a new limited company with no trading history, always ask for personal guarantees to be given by the directors. This way, if the company defaults on payment, you can then pursue the directors personally.
- When you've fulfilled your part of the contract make sure you immediately invoice your customer. Although an invoice isn't a contractual document it sets out what you've done and reminds your customer that payment is due.

- Your invoice should have a date, the customer's name and address, a description of the goods or services supplied, the price, the date when payment is due, your details, VAT number (if registered for VAT) and the rate of interest if the account becomes overdue.
- Consider providing your client with a Satisfaction Note and ask them to sign it to confirm they are happy with the work and return this to you. Whilst this doesn't prevent them from complaining if it subsequently becomes apparent the work is defective, it is useful evidence that you have done a proper and professional job.
- Make a note when payment is due.

3. Chasing the debtor

- Check your paperwork as to when payment is due. Is the job finished, have the goods been supplied, and are there any issues? You need to find out because the customer won't pay up if there's a problem.
- If there are problems with the work or the goods, don't just ignore what your customer is saying, go and see them, inspect and be clear about what your customer's issues are.
- Consider agreeing a part-payment in writing with your customer to cover the undisputed part of the job or goods and materials.
- Once you have reached your final decision on any alleged issues/problems, you have effectively reached the end of your internal complaints procedure. At this point legally you should give your customer details of an Alternative Dispute Resolution (ADR) provider.
- If you're sure payment is due and there aren't any issues over the work or goods and materials, think twice before sending a threatening letter. You'll probably want to deal with your customers on a regular basis, so try to maintain goodwill to keep the relationship alive. Try a more personal approach by trying to speak to the customer over the telephone.
- Always keep your tone professional and polite.
- Make a careful note of what's said and follow up anything relevant that was discussed in writing e.g. if the customer says they'll pay you within 7 days.
- Think about offering an incentive to get paid e.g. a discount of 5% off the invoice if you are paid within 7 days.
- Personal visits are best avoided, or certainly left until you've exhausted the telephone approach. The risk with any personal visit is that accusations of harassment could be made against you.
- If you do decide on a personal visit, use the same tactics and style as on the telephone i.e. be polite, professional and listen to what your customer has to say. If your customer is not interested, or asks you to leave, you must do so, as you have no right to be there against their wishes.
- Remember, the aim of contacting your customer is to get them to pay you and not to tell them what you think of them.
- Should a telephone call or personal visit not do the trick, then it's time to up the ante.
- Your next step should be to send a formal letter before to your customer.
- When writing to your customer, be polite, professional and, under no circumstances make threats which could cause alarm or distress.
- It's a criminal offence to harass your customer.

- Make sure your letter tells your customer, in plain English, what will happen if they ignore the request for payment. Attach a copy of any invoice and point out if interest will be due.
- If your customer is a limited company, or a business partnership, then your final letter simply needs to say how long you're giving your customer to pay, i.e. 7 or 14 days, how the debt is to be paid and conclude that if you don't hear from them, legal proceedings will follow.

4. Recovering the debt

- If your telephone calls and letters haven't worked, think very carefully before deciding on your next step.
- You have four choices: Bringing a claim in the County Court yourself, using a solicitor to bring a claim in the county court, application making your customer insolvent through either winding up petition for company, or petition for bankruptcy or using a debt collection service.
- Before suing anyone, whether you use a lawyer or not, always ask yourself: Do I stand a good chance of winning my case? Will the customer have the means to pay me? Is the amount outstanding worth the time, money and effort you'll expend trying to get your money back?
- There's no point even starting legal action if the customer doesn't have either the money or assets to be able to pay you.
- If the customer has gone bust i.e. as an individual, they've been made bankrupt or if it's a limited company, it's gone into liquidation, then don't waste any more time and effort in chasing the debt.
- Should you decide to sue, if the amount is below £5,000, then it's highly likely it will be allocated to the Small Claims Court. Don't even think about engaging a lawyer if your case is suitable for the small claims track. This is because you're unlikely to be able to recover your lawyer's legal cost even if you win your case and it's very possible that you'll end up out of pocket.
- Please note that if sending a letter before action to the debtor, that you must adhere to the requirements of the "Pre-action protocol for Commercial Actions" which came into force on 6 February 2023.
- Don't forget either, that even if you win your case and get a judgment, the court don't collect the money for you. You actually have to force the issue by enforcing the judgement via the Enforcement of Judgments Office (EJO) Again, if your customer is penniless, you may get nothing.
- Although the small claim track rules are less formal and there's less procedure to follow, you're still running a court case and, ultimately, could end appearing before a District Judge.
- It's possible your customer will admit that they owe you the money by saying so on the court form. If this happens and they don't request time to pay, apply to court for a decree by default.
- Alternatively, your customer might admit the claim and put in an application to pay by installments. They should also enclose a statement of means so you can make a decision as to whether you want to accept their offer.
- Unless the offer is ridiculously low, don't dismiss it out of hand. Ultimately the amount can be determined by the court and if this happens, the likelihood is that it may only be slightly increased.
- Your customer may admit they owe part of the debt. In this situation you'd be well advised to accept the position and then take a chance that you win the remaining part of your case.

- If you end up getting a judgment against your customer, that's the easy bit! The tricky part is deciding which is the most appropriate enforcement method to recover your money.
- The judgment can be enforced through use of the Enforcement of Judgments Office (EJO), which is a centralized office which deals with enforcement of judgements regarding recovery of goods
- Before you commit to enforcement, try and find out as much as possible about your customer's financial position. For example, use an enquiry agent, search the Land Registry and the County Court judgment register, Companies House etc.
- There are an assortment of options available to enforce your judgment: attachment of debt order, attachment of earnings order, installment order, order charging land, seizure order, order appointing receiver.
- Lastly, there is also the ability for the EJO to issue a certificate of enforceability, if they believe that the judgment cannot be enforced within a reasonable timescale, or the debtor has no assets. This will appear on the Public Register and will, in effect, impact upon the credit rating of a debtor
- Which option you choose depends on what you've found out about your debtor's financial position e.g. if your customer works for someone as an employee, you should go for an attachment of earnings order, if your customer owns property, go for a charging order etc.
- An alternative to using a lawyer is to use a debt collection service. This can save you time and money but part of the money you're looking to recover will be swallowed up by their fee.
- If you decide to instruct a debt collection agent, check their terms and conditions carefully. How much are they charging? How long will the contract last for? What happens if they don't recover anything?
- Check that they're regulated by the Financial Conduct Authority.
- Finally, as an alternative to issuing legal proceedings, consider threatening your customer with insolvency (or liquidation if they're a limited company) if they don't pay up.
- You can't bankrupt someone unless the debt owed to you is more than £5,000 or wind up a company unless the debt owed to you is more than £750.
- To start the ball rolling, you'll need to complete a form called a statutory demand.
- The debtor has 21 days to pay otherwise they run the risk of being made insolvent.
- Using a statutory demand can be effective as a threat to get a customer to pay up. It's more often than not used, though, as a bluff.
- The problem comes if your customer ignores the threat. You've then got to decide whether to take the next step to make them insolvent. For you to make someone bankrupt the fees alone are £700 for a bankruptcy deposit and £186 for court costs and there's every chance you might end up with little or nothing.
- Don't use a statutory demand either if your customer's debt is disputed. If the dispute is regarded as being 'substantial', then you'll get short shrift from the court for having pursued this course of action and could end up getting costs awarded against you.

6. Additional Information

For information and guidance on how to handle bad debts, see the following factsheets which are available on the Hub:

- **Northern Ireland Small Claims Procedure**
- **Northern Ireland Civil court judgments – How to enforce them**
- **Northern Ireland Bankruptcy Law**
- **Northern Ireland - Guidance notes on the pre-action protocol for commercial actions**
- **Northern Ireland - Letter before action (pre-action protocol)**

The following precedents are also available on the Hub:

- **Acknowledgement of debt**
- **Application for credit facility**
- **Assignment of contract debt**
- **Assignment of debt and notice**
- **Cover letter for notice of assignment of debt**
- **Northern Ireland- Letter before action (pre-action protocol)**
- **Offer of part-payment of a debt by instalments**
- **Request for a trade reference (sole name)**

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