



THE HIDDEN RISKS OF DEBT PURSUIT

In this article, Andrew Humphries, a specialist solicitor at Triton, explains that there are hidden risks associated with debt recovery that can have an unexpected impact on those in the technology and communications sector.

Unpaid fees are a common problem for technology professionals and one of the biggest challenges companies and professionals face is deciding whether or not to pursue such debts. Recovering debt can be a stressful and daunting issue that takes time and money which may be difficult to recover from.

There is often a perception that once a claim has been issued a judgment will follow in its favour. This is not always the case.

‘Remember – pursuing a claim for an unpaid debt will not always work in your favour’

Over the last few years within the ICT sector we have seen the rise of SME’s and independent contractors. Often these smaller organisations are not as resource heavy as larger more established organisations that have the cash flow and expertise to deal with claims. My advice would be for businesses to look behind the reason, or reasons, that a customer is not paying before making a decision.

Consider the risk involved in pursuing the debt through the courts. Customers may choose to defend the claim and in a situation where a defence is filed, you could end up being involved in lengthy and expensive legal proceedings, which can outweigh the amount being claimed.

Potential pitfalls you could face

Counterclaims

If we think about a self-employed IT contractor, where project work is often front-loaded, but payment, either in full, or in part, is deferred until after delivery of the final solution, or the go-live date. Customers often try to take advantage of this situation by withholding payment citing issues with the supplier’s work, or the period it has taken to complete. Such complaints may be coupled with a request for compensation for losses suffered as a result of those issues.

In those situations, it can be difficult to know what is best for business – do you press on with your claim for unpaid

fees, or chalk it up to experience and move on to new work?

Deciding whether a customer’s complaint is genuine or merely an attempt to avoid making payment can be difficult. If there is merit in the customer’s allegations then careful thought needs to be given as to whether to bring a claim of your own (and risk ultimately having to make a larger payment to the client than is owing under the contract), or if a better approach would be to seek a compromise with the customer at an early juncture by agreeing to write off your fees.

Get the decision wrong and you risk losing revenue or becoming embroiled in time-consuming litigation that could damage your business in the long run. But if you gauge the situation correctly, you can ensure that appropriate recoveries are made and time is not wasted pursuing ‘bad’ debts.

Your customer has no money

It can be seen as a convenient excuse, but it is important to consider whether a customer can actually pay you. If legal proceedings are commenced against a customer who has or is about to run out of money, then the prospects of recovering the amount due to yourself or business are very limited - you could end up being at the back of a long line of creditors even if you are successful at trial.

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There is also the chance that you could spend a significant amount on legal costs, as well as the court fees and barrister’s fees, with the ultimate result of the business being in no better position than at the start. In some instances you may even be worse off due to the fees you have incurred during the process.

If a customer is simply not able to pay the full amount of the invoice, but could afford to repay the invoice in stages, then a solicitor could liaise with the customer to put in place



a staged re-payment plan. However, it is important to be aware for cash flow purposes that repayment plans often take quite some time to be satisfied.

Time and stress

Another important factor to consider is the time and effort that goes in to pursuing a claim through the courts. For example, depending on the amount of the debt, a claim can take anywhere between six months to two years to conclude (and sometimes can take even longer). Continuing to chase a single debtor or multiple debtors with or without the internal resource of a larger organisation to assist can mean that running an efficient business or service becomes more focused a reactively dealing with work, with the majority of time and effort spent on that one issue.

This type of business disruption not only effects work flow and business operations, stress can take its toll on individuals involved in the claims process to varying degrees. This negative impact on a person or a team may have a rolling effect into their work.

Considering that the majority of SME technology companies in the UK, despite having significant business funding will not have the immediate cash flow or cash reserves to deal with the impact of a judgement not made in their favour. The amount of money you may be required to pay out, or have to deal with not recovering will affect business continuity and potential growth.

The importance of getting the right advice

Disruptions to your business can often have a direct and sudden impact on your ability to deliver; high customer expectation of technology products and services merely compounds that risk.

In order to make the right decision it is important to seek relevant advice from a specialist that deals in technology related disputes. They will be able to advise on the merits of a claim and the associated risks involved, allowing you to make the best decision with all the facts that causes the least disruption to your business.

Remember – pursuing a claim for an unpaid debt will not always work in your favour.

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