

INSOLVENCY AS A COLLECTIONS TOOL

One sure-fire way to get a debtor's attention is the threat of insolvency, but it must be used selectively

By Jonathan Hogg

INSOLVENCY itself is generally the worst scenario in credit control. However, the threat of insolvency is probably the best tool available to a creditor.

For credit controllers and debt recovery professionals, one of the biggest difficulties is getting the debtor to take a payment demand seriously. It is all too easy for a debtor to put off payment until a later date or to make promises of payment that there is no real intention of fulfilling. Most debtors tend to be juggling a number of debts and only making payment to the creditor who is the most urgent and immediate threat.

Although many debtors will respond to a general threat of legal proceedings, the practised debtor will know that it will take some months to obtain a county court judgment and will, therefore, play a delaying game until the last possible moment. However, when faced with the threat of insolvency, there are very few businesses or individuals who will not sit up, take notice and make contact to try and avoid further action. Once the debtor's full attention has been seized, half the battle is over and the debtor will ensure that the insolvency threat, as the most dangerous, is dealt with as a priority.

There are, of course, exceptions and insolvency threats are not always

appropriate, such as in the following circumstances:

- ◆ Genuinely disputed debts.
- ◆ Cases where the debtor is truly insolvent and has no prospect of paying.
- ◆ Low value debts, as there is a current minimum debt of £750 for insolvency proceedings.

In the case of individual debtors, the threat of insolvency is made by serving a statutory demand which states that, in the absence of payment or an application to court within 21 days, a bankruptcy petition will be issued.

In the case of limited company debtors, the threat of insolvency can be made by letter giving as little as 48 hours to make payment, failing which a winding-up petition will be issued to put the company into liquidation.

Added pressure can be exerted upon a reluctant debtor by pointing out that as soon as a bankruptcy or winding-up petition is issued, the public at large will become aware of the petition. The consequences of this are that all other sources of credit are likely to vanish and the debtor's bank account may be frozen. Any dispositions of property will not be valid without the specific authority of the court.

In summary, the advantages and disadvantages of insolvency threats are as follows:

Advantages:

- ◆ Shows the debtor that you are absolutely serious about collection.
- ◆ Much more immediate than county court proceedings.
- ◆ Cheaper, as a threat, than taking county court proceedings.
- ◆ Likely to put you at the head of the queue for payment of debts.

Disadvantages:

- ◆ If the debtor does not respond, you may lose credibility if you do not proceed to issue a winding-up petition.
- ◆ The actual issue of a petition is a very expensive business.
- ◆ Not suitable for disputed or low-value debts.
- ◆ A welcome favour to truly insolvent debtors.

At Guy Williams Layton, our commercial recovery team are highly experienced at using the threat of insolvency to obtain the maximum possible payment in the quickest possible time from debtors who have been treating the creditor with contempt. Such debtors may require a major threat in order to initiate dialogue. We have developed various possibilities for cost-effective packages suitable for carrying out this work. **CCR-2**



Jonathan Hogg
is a partner and
head of commercial recovery,
Guy Williams Layton Solicitors
Email: jh@gwq.co.uk

GUY WILLIAMS LAYTON SOLICITORS

