

Debt recovery in difficult times

Sport clubs are no different from ordinary businesses in that many will be struggling financially in these recessionary times. In particular, major difficulties can arise when club debtors fail to pay what they are due. To the creditor, the knock on effect can be catastrophic.

In this Factsheet, our litigation specialist Maggie Moodie gives some top tips for ways in which sports clubs can effectively avoid and combat difficulties when they are not paid by debtors.

How can sports clubs attempt to maintain cash flow when debtors are struggling to pay?

Cash flow: two little words, but ultimately the key to any successful business. Sports clubs may struggle to survive if they do not maintain a healthy cash flow.

Contractual terms. First, clubs should provide debtors with clear, unambiguous contractual terms. Debtors should be left in no doubt about what is to be paid and when.

Statements. It may also be worth setting out a statement on payment terms and explaining the reasons behind why obligations must be met timeously.

Consistency. Make clear that any failure to pay on time will not simply be ignored. Clubs must ensure debtors know that action will be taken if there is a failure to pay. By being up front and consistent, debtors will know that consequences will follow should a payment be missed. Some debtors will deliberately fail to pay those creditors who have a poor track record in debt recovery.

Maggie's Top Tips:

- Use clear contractual terms
- Issue regular statements
- Be consistent

How can clubs attempt to improve credit control when debtors are struggling to pay?

A robust credit control system is important. Many businesses automatically issue demand letters when payment isn't made on time but it is very often more productive to pick up the phone and speak to your debtor. If you opt for making a call, it is however important that you keep a record of the conversation and that if you are promised payment by a certain date; you follow up on that date with a further call or a demand letter.

Credit control letters also serve a purpose. If you are forced to raise a court action for payment, you will want evidence that you have made a formal demand for payment and made clear that if payment hasn't been made by a certain date, you or your solicitors intend to raise proceedings.

Maggie's top tips:

- Pick up the phone and speak to your debtors
- Use credit control letters

How can clubs effectively manage the need for court action?

With the best will in the world, the most robust credit control procedures can fail to produce results. At this stage, clubs have to consider whether or not court action is appropriate.

It is important to note from the outset that if a club is an unincorporated association, any court action would need to be raised in the name of its office bearers or in the name of other members authorised to do so as an unincorporated association. This is because an unincorporated association does not have separate legal personality and cannot sue or be sued in its own name.

Solicitors. Unless the debt is under £5,000, any club which is a limited company would need to instruct solicitors to raise court proceedings. For debts under £5,000, clubs should consider raising the court action themselves. The Small Claims Court was designed to avoid legal costs and Sheriff Courts are very helpful in advising on the process if your club decides to go for this option.

Bear in mind, however, that sometimes even one letter from a solicitor rather than the club itself yields good results.

Court procedure. The vast majority of cases settle before any substantive hearing is held. It is highly unusual for a hearing on evidence (a Proof) to go ahead, particularly in debt recovery cases. In most cases, the debtor either does not defend the action (in which case a court order or “decree” is pronounced automatically) or the debtor defends the action but parties come to a settlement agreement in order to avoid costs.

Enforcement. Finally it is important to bear in mind that obtaining a court order or decree is not necessarily the end of the matter. Yes, it is an official document ordering the debtor to pay. However, this does not mean the debtor will actually produce the money! There are a variety of ways to attempt to enforce court orders in Scotland such as serving arrestments (which freezes money due to the debtor in the hands of a third party), attachments (which may ultimately lead to the sale of the debtor’s moveable property) or inhibitions (which prevent the sale of land or buildings without first settling the debt). It may be worthwhile for your club to instruct a solicitor to ensure that the most effective enforcement method is used to ensure optimum recovery and minimum cost is carried out properly.

Maggie’s top tips:

- For debts under £5,000, clubs should consider raising the court action itself.
- Consider a letter from a solicitor.
- Seek advice on enforcement.

In summary

Sports clubs need to have healthy cash flows and robust credit control procedures if they are to prosper. Ensuring debtors know where they stand is important. A consistent approach is necessary. Whilst chasing members for a debt can be a difficult and sensitive task, it’s often a necessary evil if you want your club to survive.

Successful credit control and debt recovery starts with getting a contract right from the outset. Here are some of our top tips:-

- **Know who you are contracting with.** If your club is entering into a contract, make sure you know you are contracting with. Is it a limited company or an individual trading as a business entity? Does the company number provided to you match the information on Companies House? Ensuring that you have the correct name and address of your member or customer and that the contract documentation and invoices are sent to the correct party and the right address can save problems arising if your club is subsequently forced to sue for payment.
- **Confirm your payment terms.** If your club has standard terms and conditions, make sure these are sent to your members or customers at the time you are making a contract and try to get confirmation that they have been received. If you issue terms and conditions after the contract has been formed, they have no legal effect and will not form part of the contract.
- **Make clear your payment terms in the contract.** When do you expect to get paid? What are the implications for your member or customer if they do not pay you on time? Will you charge interest at a particular rate over base for example?
- **Do not assume.** Do not assume that you are automatically entitled to charge interest and compensation under late payment legislation. If you state that interest applies at a particular rate in your contract that is the rate you must apply.
- **Adopt a carrot approach.** To encourage prompt payment of your invoices, think about adopting a “carrot” approach. So for example, your contract might state you expect payment in 30 days but that you will apply a discount if you are paid within 7 days.

If you get all of these things right from the start, it will be much more difficult for a debtor to refuse to pay your club on the basis that your contract terms are not clear. Spending a bit of time getting it right at the beginning can often save time and money in the long run.

Any queries?

If you would like to discuss any aspect of this article or wish debt recovery advice for your sports club, please contact Maggie at sportsdesk@morton-fraser.com

To see how we can help you, contact:



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