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## High Court provides welcome boost for creditors pursuing debts

The High Court has ruled that creditors can still enforce debts even if the original loan or credit agreement is no longer available.

The case involved several major UK banks and their customers. It arose because under the Consumer Credit Act 1974, lenders must supply the borrower with a copy of the credit agreement within 12 days if asked to do so. Some debtors have tried to use this requirement as a way of stopping debts being enforced when the creditor was unable to supply a copy of the original agreement.

Now Judge David Waksman has ruled that it is acceptable for the creditor to merely supply a reconstituted copy of the original loan agreement. Judge Waksman said: "The debtor has a legitimate interest in seeing a copy of the agreement he signed, not in the sense of proof of execution but as information."



However, he then went on to say: "The absence of a copy of a signed executed agreement is no evidence that such an agreement was not made."

If the original loan agreement was not available it would be acceptable to provide a reconstituted version. This could be drawn up from other data held by the creditor but must include the name and address of the debtor as it was at the time when the agreement was made. "A creditor can satisfy its duty by providing a reconstituted version of the executed agreement which may be from sources other than the actual signed agreement itself."

This did not mean that a creditor could simply invent a loan agreement retrospectively to comply with the law. "It must - of necessity - be based upon records held as to the debtor and the agreement he made."

"That a creditor needs to take care when providing the copy is highlighted by the fact that it is implicit in its duty that it is an 'honest and accurate' copy."

## Firms should 'follow public sector's example' over prompt payment

Large companies are being urged to follow the example set by the public sector in reducing the time taken to settle invoices.

The latest official figures show that 19 out of 20 central government invoices are now paid within 10 days. That's an improvement of 24% since November 2008. It means that £73bn has been paid to private companies within 10 days

by the Government since June last year. Local authorities have also improved their payment times. Figures compiled by the Forum of Private Business show that they now take only 18 days on average to settle invoices, with 42% of invoices paid within 10 days.

The private sector, however, is trailing far behind although there have been some improvements.

Lord Davies, the Minister for Trade, Investment and Small Business, has urged bigger companies to take the matter more seriously. Only 22 have so far signed up to the Government's Prompt Payment Code.

There are a total of 640 other signatories to the code which requires companies to settle within the agreed terms.

Lord Davies said: "Late payment creates uncertainty in the supply chain and carries a significant cost to UK business. In 2009 it is anticipated that UK business will pay approximately £180m in interest on overdue payments. That's £180m of potential investment lost."

It would be nice to think that the private



sector will heed the advice but in reality, many companies will continue to delay payment for as long as possible. Firms will need to be proactive in ensuring that their cash flow remains healthy.

It is important to deal with potential problems quickly before debts begin to mount up. Early action in the form of a solicitor's letter is usually enough to ensure a speedy settlement. If it doesn't then there are a number of legal steps that can be taken to rectify the situation before things get out of hand.

Creditors can charge interest and impose penalty payments on overdue invoices. This is often more than enough to cover the legal costs of recovering the initial debt.

### Where next



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# OFT investigates high cost of corporate insolvency

The Office of Fair Trading (OFT) is carrying out a market study into the way corporate insolvencies are conducted in the UK.

It follows concerns among ministers and the Insolvency Service itself that the system is not working as fairly and as efficiently as it should. The World Bank recently published a report showing that the cost of closing a business in the UK is higher than in many other countries with similar or even better recovery rates.

The study will examine the structure of the market and look for features such as higher fees or lower recovery rates that could be detrimental to certain groups of creditors. The study covers all of the UK with the OFT collecting and analysing information from various professions including law firms, accountants,

government regulators and trade bodies.

Clive Maxwell, OFT Senior Director of Services, said: "We want to identify any potential problems within the corporate insolvency market to ensure that firms and practitioners are competing freely and that the market is working well for the end consumers."

The Forum of Private Business welcomed the investigation but called on the OFT to also focus on cases where phoenix companies and their directors abuse the process. A spokesman said: "When a business drops out of



the market, banks and the Government take their cut but what about the small business which has supplied that company and has never been paid?"

"Or, if a competitor wipes the slate clean of debts and carries on trading, where does that leave those small businesses struggling with their own finances?"

"Though it may be too late to help those small businesses who have been hardest hit by phoenix practices in this recession, surely we can use this review to help isolate and correct the problem?"

We shall keep clients informed of developments.

## Government drops plan to reduce time limit for debt recovery

The Government has withdrawn its proposal to reduce the time limit for pursuing debts from six to three years.

It follows criticism from the credit industry that the move would lead to a flood of litigation with creditors being forced to take early court action to protect themselves against debtors who might abscond.

The measure was due to be included in the Civil Reform Bill but in a written parliamentary answer, the Justice Minister Bridget Prentice, announced that it was being dropped. She said: "These provisions were based on a Law Commission report of 2001. But a recent consultation with key stakeholders has demonstrated that there are insufficient benefits and potentially large-scale costs associated with the reform.

"The limitation reforms will therefore not now be taken forward."

## High Street retailers facing renewed insolvency threat

The insolvency trade body R3 is warning that more than 20 well known High Street retailers face the threat of insolvency over the next few months.

It says 22 established retailers went into insolvency in the first quarter of 2009 and the same number are facing problems this year.

R3 says the first quarter of a new year can be particularly active because many retailers delay insolvency proceedings in the hope that they can recoup enough money over the festive period to keep them afloat.

In a survey of R3 members, 61% said that creditors also hold back in the hope that they will receive higher returns due to increased takings over Christmas. In addition to these factors, 76% of insolvency experts believe that the high unemployment figures will result in less consumer spending and put even more pressure on retailers.

R3 believes the outlook will remain bleak



for retailers even if the economy shows more signs of recovery because if their assets rise in value it will merely prompt creditors to act more aggressively.

A spokesman for R3 said: "Rising unemployment and decreased spending in the lead up to Christmas coupled with heightened creditor aggression in the New Year leaves the retail sector facing another bloodbath.

"While it would be comforting to think that the worst of the downturn is over, it's worth remembering that insolvency peaks after a recession ends."

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