

CREDIT MANAGEMENT

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High Fidelity

What's the best way of managing a high volume of low balance debts?

AUTHOR – Sean Feast FCICM

MANAGING large volumes of low value accounts can be challenging and hard to manage. Various options are open to the hard-pressed credit manager. They could outsource to a commercial debt collection agency. They could decide to litigate themselves. Or they could adopt a hybrid approach, selling their debt to a debt buyer which then collects and/or litigates on their behalf.

Technology is another solution. Collections systems are available that can be implemented within minutes and collecting debts within hours, and from all over the world. They recognise that the biggest reason for non-payment of an invoice is often because it has simply been lost in the system, addressed to the wrong person, or just that the right person is no longer contactable because of COVID.

So looking at the options, what are the benefits to a finance team in selling their debt? How is it that a third party is better positioned to use the court system than the businesses they represent? Has the court system really ground to a halt? And could credit managers avoid selling their debts or using the court process altogether by adopting new technologies?

MANAGING AGING DEBTS

A credit manager in any credit team will have a continual flow of new arrears accounts/unpaid invoices to deal with. There comes a point, however, when chasing the aging historical debt ends, and focus turns onto newer debt with a better chance of collection. So what do they do with a tranche of debt they cannot collect? Karen Savage of Azzurro Law, believes selling those debts can be a good solution: "Selling the older debt provides a cash injection into the business and transfers customer management to the debt buyer," she explains. "Importantly though, the seller does not lose control after sale and certain collection strategies can be agreed or excluded post sale."

Karen says that credit teams that want to keep their internal collection team overhead down do this very well: "Some creditors sell us their debts after six weeks beyond terms. Selling at this earlier stage achieves a higher price because it is still relatively 'fresh' in terms of the collection

cycle. After purchase of the accounts and sending the notice of assignment to the customer, we use a variety of data sources to help place the accounts into the most appropriate collections strategy, and into litigation where appropriate."

A credit manager could, of course, litigate themselves, but to do so – especially in volume – requires a sophisticated case management system: "Whilst it is possible for a credit manager to deal with litigation for small volumes via Money Claims on-Line, this is not efficient for higher volumes of claims," she says. "By selling to a commercial debt purchaser, management and collection of the customer then becomes their responsibility. Taking action themselves through court, even assuming they are successful, can take many months to achieve payment where sale can generate immediate cash and allow the credit team to focus on the current outstanding debts."

FAILING SYSTEMS

Karen, a veteran litigator for almost 30 years, believes that talk of a failing court system has been greatly exaggerated: "Use of litigation strategies on the right

accounts is still very much integral to what we do and has been through COVID," she says. "We have been issuing court claims throughout the pandemic."

By way of example, Karen says that while enforcement activity did indeed pause at various points in the pandemic, they still managed to issue 2,200 court claims and recover £10 million in the last two years within Azzurro Law, and that doesn't include the amount collected by Azzurro Associates' wider DCA and legal panel and/or the debt collection agencies associated with its parent business.

But what about the expense? "Utilising litigation is very effective, but there is often an arbitrary limit set within a business as to what size of debt to incur court fees on," Karen continues. "Because we have access to multiple sources of credit bureau data, we make sure that we litigate on the cases with the best propensity to pay and allow forbearance and breathing space where required."

"Utilising a blend of multiple bureau information together with years of commercial litigation experience helps us to achieve significant recoveries. The investment we and others have made in case management systems,

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specialist collectors and bureau data would likely be beyond the reach of many credit teams. Much investment is made in the underwriting and customer onboarding process within a business, but less so in the collections team.”

THE ART OF PERSUASION

Philip Roberts, Partner within the Business Recovery Unit in Clarke Wilmott, believes that every effort should be made to obtain settlement of a debt prior to litigation, particularly with lower balance/higher volume debts: “A debt pre-action protocol (PAP) letter is a very persuasive tool to prompt payment or engagement from a customer and will often lead to an amicable settlement,” he explains.

There will however always be cases that do not settle at the pre-action stage despite a creditor’s best efforts: “Provided a focussed approach is taken and the ultimate recoverability of the debt is considered, then litigation is a good solution for these debts. Customers will often choose to ignore the debt and will not appreciate the gravity of the situation until such time that they receive a claim from the court. The future credit reference implications that a CCJ could bring also become more apparent at this stage.”

With costs largely recoverable and with enforcement methods becoming available once a judgment is obtained, Philip says that debt litigation is an effective step when sometimes the only other option is for the debt to be written off. He also agrees with Karen that the court system has not necessarily ground to a halt but more cautiously describes it as a ‘mixed bag’.

“It depends on what court function you are using,” he explains. “The more process-driven aspects such as issuing claims, obtaining default/agreed instalment judgments are subject to delays – but only a matter of weeks generally. Where we are experiencing difficulty is when a case is defended or there is a requirement for judicial involvement. It depends on the particular county court hearing centre, but sadly, it is not uncommon for hearings to be cancelled at the very last minute due to ‘a lack of judicial availability’ i.e. there is no District Judge to hear the proceedings. This is at a point where the parties are prepared for the hearing and the costs of instructing counsel have already been

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incurred. It can be several months before the claims are then relisted.”

Philip says the court system seems to be coping better with dealing with cases remotely but it seems to be a simple case of capacity and having the judges available to deal with the volume: “In respect of enforcement,” he continues, “the delays with county court bailiffs have been evident for many years and the pandemic has certainly not done anything to help this. Other types of enforcement such as charging orders are less affected but again, if a hearing is required, they are subject to the same issues in terms of District Judge availability.”

Paula Swain, Partner at Shoosmiths, is in agreement with Philip in that the ability or otherwise of the court system to cope with the current workload is mixed: “I’ve heard that CCJs are back up to pre-pandemic levels,” she says. “However, the courts are dealing with a backlog of work – particularly getting cases through to a hearing stage.”

Notwithstanding those challenges, Paula is still confident that litigation can be an effective strategy for low-value high volume debts: “Where there is high volume there is usually a large unpaid sum sitting on a ledger,” she says. “Often the costs of litigation are seen as a barrier to taking steps to enforce low value sums. However, if we zoom out, this often leaves a large sum of money uncollected. This helicopter view is a better starting point when considering which strategy to adopt.”

Paula says that a good way to start is with a trial of cases to test for ‘gone aways, disputes or requests for time to pay. This, she says, will help to inform the likely performance of the remainder of the ledger should you choose litigation for some of those accounts: “While court fees and fixed costs can be recoverable (with interest and late payment charges where applicable), this does depend on the Defendant’s ability to pay,” she adds. “Categorising debt (where possible, and with support from litigation experts) can be an important investment of time.”

COLLECTIONS PLATFORMS

Gary Brown, Founder of Debt Register, comes at the issue of collecting high volumes of low-balance debts from a different angle. He agrees with Karen’s point that it is not viable for a business’ credit team to litigate a high volume of low balance debts in the vast majority of cases. Litigation is both time consuming and costly to conduct in-house, without any guarantee of success.

His reasoning is supported by some interesting statistics: between January – March 2019 the mean time taken for small

claims (debts under £10,000) to go to trial was 36.9 weeks. Multi/fast track claims (debts over £10,000) took 58.5 weeks to go to trial, up 3.9 weeks and 1.8 weeks respectively compared to the same period in 2018.

Fast forward to July – September 2021 and the mean time taken for small claims and multi/fast track claims to go to trial was 50.7 weeks and 70.6 weeks respectively, 12.6 weeks longer and 11.3 weeks longer than the same period in 2019 and 1.9 weeks and 8.4 weeks longer for the same quarter in 2020 respectively.

“This means that if we issue a legal claim today for an outstanding commercial debt and it is allocated to the multi/fast track within the UK court, and that claim is defended, then we would be looking at a trial date around September 2023. It means credit managers run the risk of their customers raising a spurious defence, simply to push out their credit and/or avoid payment altogether. And for a debt of £10,000.01, the claimant would have to pay out over £1,000 up front with no guarantees of getting any of that back.”

Gary’s solution is a new software platform that automatically identifies and verifies email contacts within a customer who is responsible for paying the bills. (Incorrect emails are still the biggest cause of requests for collections going unanswered.) It asks for that bill to be settled, with the consequence that failing to do so will result in the company being reported to the leading credit reference agencies (CRAs). This damages their credit score, as well as their reputation, in an age when payment performance has to be reported to shareholders.

“Debt Register delivers a tangible and direct consequence for those companies should they continue not to pay an undisputed, overdue invoice,” he adds, “and it is this ‘consequence’ that seems to concentrate the mind!”

Gary used his system recently to successfully collect a £2,502 debt that was more than four years (1,499 days) overdue – and it did it within 45 minutes of the new software-as-a-service platform going live and the debt being uploaded. Gary invented the system having spent his life working in credit management and becoming fed up with customers who sat on their invoices without paying them: “It’s an industry-wide problem and I was determined to do something about it,” he explains.

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