

Debt Recovery FAQ's - Limitation and Jurisdiction

1. My accountant has just been reviewing our debtors and has pointed out that we have one customer who has failed to pay an invoice we sent them in 2010. Is it too late to do anything about it?

The basic rule in contract cases is that the Claimant has six years to bring a claim for the monies due. However, in order to know whether or not those six years have passed you need to look at when the right to bring an action began. If the invoice in 2010 was the first time that payment had been requested it is likely that the customer was only expected to pay at this time and not before. Therefore, the right to pursue the customer for the debt started less than six years ago and there would be no problem in issuing the claim. You should be cautious though and check any contractual terms you have as you may find that a shorter limitation period was agreed in the contract.

2. My customer's business is based in Germany. They have a small office in London and I know that much of their trade is conducted in the UK but all their key management is based abroad. Can I issue a claim for the money they owe me in the UK Courts?

If you are in business with someone who is based abroad the key factor on which court has the jurisdiction to determine a dispute will sometimes be set by your contract. Therefore, the first thing you should do is check your contract terms and conditions. Where you are regularly dealing with customers who are based abroad and you contract on your own terms and conditions it would be sensible to include a clause to specify it is a Court of England & Wales that disputes will be referred to.

If you do not have written terms or they do not specify which legal system should be used to resolve disputes then provided that the contract was carried out at least in part in England or Wales then there should not be a problem issuing at your local court. However, prior to deciding whether or not to issue the claim you should give some consideration to whether you are likely to be able to enforce the judgment even if you are successful.

3. The debt I am owed is for just over £25,000. This is a lot of money for my business and so I cannot write it off. If I do manage to secure judgement against my customer who is based in Germany and they fail to pay it what can I do to enforce the judgement against them?

When enforcing judgements against a business which is based abroad it can be challenging but there is a procedure in place to do so. The first thing you need to do is notify the company that you have secured judgment. If they fail to pay you will then need to determine where the businesses assets are. If they are in England or Wales you can enforce the judgment in the usual way against these assets.

However, if the office in London is simply a small rented office for administration and there are no real assets of the company in England and Wales you will need to look to enforce your judgement abroad. If the judgement was obtained without the customer objecting to the claim then you may be able to apply for a European Enforcement Order. If you obtain this order you can then enforce the judgement against the business' assets in Germany.

For further advice on how to pursue your business' unpaid debts, including more information on Herrington Carmichael's debt recovery service which starts from just £35 plus VAT, please contact our Dispute Resolution team on 01276 686222 or 0118 977 4045 or email drteam@herrington-carmichael.com

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