
Have you been “bounced” recently?

What can you do in a situation where you have supplied goods or services to somebody in return for payment by cheque where that cheque has then bounced?

A cheque is in effect a promise that payment of the specified sum will be made by the relevant bank and that if, for whatever reason it is not, that the debt will be honoured. In view of this, a customer who provides a cheque which is then dishonoured will have little or no real scope for defending a claim against it other than in two very limited circumstances:

- That it received no consideration (nothing in return) for the cheque. The Court will not look at the adequacy or suitability of what was supplied in return provided that something was supplied
- That the cheque was provided in respect of an illegal contract or obtained in a fraudulent or unlawful manner.

Under the circumstances, the provider of the bounced cheque will very rarely have any form of defence and the recipient can resort to Court action immediately once it has given notice of the dishonour.

What are the options available?

- High Court or County Court proceedings followed by an application for summary judgment for the sum claimed together with interest and costs. Costs are only recoverable where the claim is for £5,000 or more. You will then need to consider enforcement action if payment is not received pursuant to the Court's judgment.

- Where the amount of the cheque is for £750 or more and the cheque has been returned marked “refer to drawer” you can immediately issue a winding up petition or a bankruptcy petition. Where a cheque has been dishonoured for some other reason you can still proceed with a winding up or bankruptcy petition but should serve a statutory demand first.

With either option it is important that you should have given the provider of the cheque notice of dishonour and an opportunity to rectify the position first.

Exactly the same position applies with respect to direct debit payments.

This information sheet has been prepared to highlight some key issues relating to the honouring of cheque payments. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at January 2002 and may be affected by subsequent changes in the law.

Should you require any specific legal advice on the issues covered, please contact Kamal K Aggarwal by email at kamal.aggarwal@ts-p.co.uk or call Kamal on 01892 510000.