Federation of Small Businesses

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20 September 2024

Dear Sir/Madam,

RE: Call for evidence on enforcement

FSB welcomes the opportunity to provide a response to the above call for evidence.

FSB is a non-profit making, grassroots and non-party political business organisation that represents members in every community across the UK. Set up in 1974, we are the authoritative voice on policy issues affecting the UK's 5.5 million small businesses, micro businesses and the self-employed.

For many small businesses disputes often go unresolved because they are expensive and time consuming to pursue. Our research shows that 70 per cent of small businesses had at least one legal dispute in the five-year period, with majority of small business disputes being related to contractual disputes involving issues about payment, with 42% relating to late payment and 30% relating to non-payment. Our research also shows that an average value of a dispute is £18,000, and the average cost of resolving a dispute is around £17,000, including both direct and indirect costs. Therefore, it is unsurprising that many disputes go unresolved. With that said, FSB has long called for simplification of the dispute resolution processes to help reduce costs for small businesses and to help them to resolve disputes, so that they are not priced out of recovering what is rightfully theirs.

Small business experience of enforcement

One of the main issues with regard to enforcement for small businesses is that as it stands it can be quite onerous and expensive for small businesses to pursue. Small businesses representing themselves in court often assume that they will receive a judgment in court with regard to recovery of debt and that the court will also help them with enforcement and recovery of debt, however this is not the case. Currently, following issuing of a judgment the expectation is that a creditor has to make an application to get information about a debtor and then have to personally serve the order for information if it is not complied with, which is a further drain on the business owner's resources, and a further delay in finalising the case and recovering what they are owed. This post judgment process can take months in some cases, which by draining further resources may put a small business owner in significant difficulties with cash flow. It is unsurprising that this leads to many smaller businesses ultimately failing to recover what they are owed. Small businesses are much more vulnerable in the market than larger firms as they do not have financial reserves or support of specialised teams or lawyers to deal with unexpected shocks and circumstances.

Judgment orders

In relation to obtaining information about a debtor's means and asset for enforcement purposes, a simple practical improvement would be for the court to make an order supplementary to a judgment for debt requiring that if the debt is not settled within 28 days of judgment or in accordance with the

terms of the judgment order, the statement of means attached to the order must be completed and sent to the court, to ensure that the debt recovery process begins as soon as a decision is made for the debt to be recovered. A further information sheet detailing possible modes of enforcement open to the judgment creditor and the likely additional costs and fees which the debtor may have to pay could also be attached to the judgment to encourage early settlement. If the creditor has to advise the court of payment, and the debt is not settled within 28 days of the judgment and the debtor fails to lodge the statement of means and assets within the specified time, provision could be made that the court then reissues the order with penal notice attached and including notice that an automatic additional penalty for default will follow. Those changes would save the creditor from having to issue an application and pay court fees, and would shorten the current information gathering timescale.

Information about judgment debtors

Another option would be to require judgment debtors to complete the statement of means and assets at court immediately after judgment, with notice being given in advance that such process would be followed and that debtors should bring all relevant information to court. Provision could be made for statements of means and assets to be delivered electronically or for completion of an online form, with uploaded evidence in support.

It should also be considered whether there should be a formal mechanism for the courts to discover basic information about the debtor rather than relying on the debtor to provide accurate information about their income and assets. For example, this could be done by allowing the court to access basic information held by the Government for the purposes of enforcement. At present valuable court and creditor time is wasted on trying to obtain information which is already readily available in relevant systems. For example, DVLA information may confirm a debtor's address, and the Land Registry may identify all properties registered in the name of a debtor. The former is currently not available, the latter only pursuant to court order and not as a matter of right. Tax and VAT records would also potentially inform courts as to a debtor's whereabouts and business interests, and Companies House may be able to confirm an individual's shareholdings and address if they are a company director or shareholder. We recognise that there may be data protection concerns regarding this suggestion however, if the court was the recipient of the information and only utilized that which was required for enforcement purposes, that issue could be simply overcome.

Small businesses have fewer resources that larger ones, and in many cases a small business owner with only handful of employees will be responsible for running their business as well as trying to settle any disputes with regard to payments and recovery of debts. Therefore, for a small business owner to go through the courts process which can often be significant strain on resources in order to obtain judgment for the debt, and to be thereafter required to take additional steps at additional expense to enforce a judgment, and possibly also to locate the debtor, does not seem fair or reasonable when considerable assistance could be lent by the court in relation to those requirements. if appropriate time and costs saving measures can be put in place within the court processes (perhaps via appropriate pilot schemes) or via use of information from other government agencies to help locate debtors and identify income streams and assets, that would help to mitigate the current economic damage to small businesses caused by late payment or non-payment.

Federation of Small Businesses

FSB would like to see the justice system support small businesses to recover debts that they are owed. Our research shows that many small businesses already abandon many their claims or leave disputes unresolved due to the costs and time involved in attempting to resolve them. Without appropriate streamlining of procedures and support there is a continuing risk that many small businesses will continue to be at a disadvantage when faced with recovery of debt within the justice system, which will also have detrimental impact on the wider economy.

Yours sincerely,

Neil Sharpley
Policy Champion, Home Office and Ministry of Justice Policy Units
Federation of Small Businesses

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