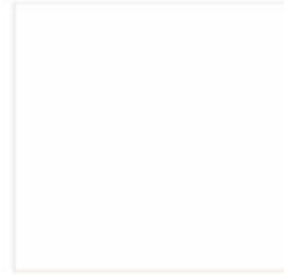
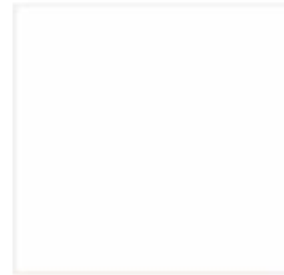
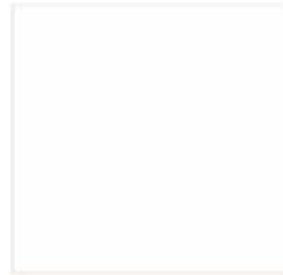
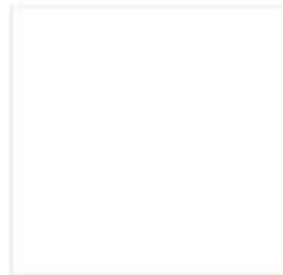
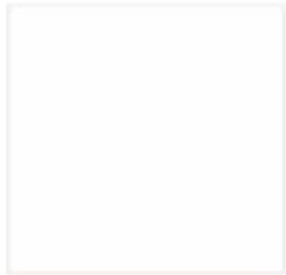


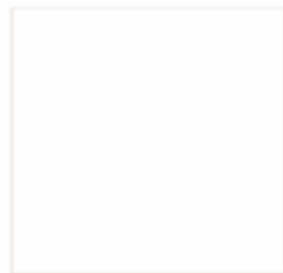
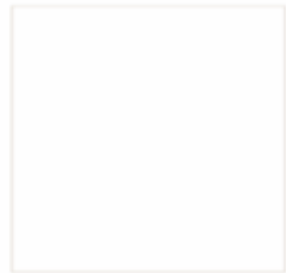
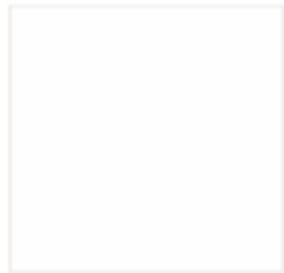


Best practice in education



Managing your school's cash flow: Effective debt recovery through the courts

Tabitha Cave, Partner



www.vwl.co.uk



Managing cash flow: To litigate or not to litigate?

Tactical considerations:

- ▶ Is the child still at the School?
- ▶ Is your house in order – can you prove the debt?
- ▶ Is it cost effective to do so?
- ▶ Timing – concurrent legal proceedings? delay?
- ▶ Other options – eg instalment arrangements?



Managing cash flow: Is it cost-effective to litigate?

- ▶ **How much is outstanding?**
- ▶ **Is the claim likely to be disputed?**
- ▶ **Litigation costs?**
- ▶ **Prospects of proving the debt?**
- ▶ **Prospects of enforcing judgment?**
- ▶ **Likely time commitment of your staff in proving the debt?**
- ▶ **Message to the parent cohort?**
- ▶ **Reputational risk?**



Managing cash flow: What you need to know

Knowledge is power

- ▶ **Know your debtors – are they “good for the money”?**
- ▶ **Know your contract – does it support your claim?**
- ▶ **Know your remedy – what are you hoping to achieve?**



Managing cash flow: Time is of the essence

- ▶ **Longer gap before attempted recovery of the debt = less likely payment in full will be achieved**
- ▶ **Delay can prejudice/prohibit the litigation process**
- ▶ **Limitation Act 1980 – have 6 years from the date of breach of contract**
- ▶ **May be more expensive to litigate later**



Managing cash flow: Proving the debt

Contractual considerations

- ▶ **Who is liable for the payment of fees?**
- ▶ **Do you have a contract for each of the children attending the particular school they are at?**
- ▶ **Was a deposit paid & has credit been given?**
- ▶ **What are you doing about interest accruing?**
- ▶ **Beware of assignment issues**



Managing cash flow: Proving the debt

Assignment issues:

- ▶ Unpaid debt generally forms part of the assets transferred on any merger or acquisition (but does not have to be)
- ▶ In order for the new entity to recover the debt then debtors need to have been given notice of the transfer
- ▶ Possible for the old entity to retain the contractual right to pursue debts on behalf of the new one



Managing cash flow: Proving the debt

Ensure the claim hasn't already been compromised

- ▶ By agreement of the School
- ▶ By making an open offer to settle
- ▶ By acceptance of a payment tendered in “full and final settlement” of a fee dispute without notifying the debtor of your intention to do so **IN ADVANCE**
- ▶ By the use of loan companies



Managing cash flow: Proving the debt

Dishonoured cheques

- ▶ If any, maximise your chances of recovery by serving notice of dishonour under the Bills of Exchange Act 1882 ASAP
- ▶ Act suggests you should do so within 24 hours
- ▶ Notice should be by letter & enclose a copy of the bounced/countermanded cheque



Managing cash flow: Final considerations before litigation

Review:

- Is it economic to pursue the debt?
- Is the debt disputed and if so has the query been resolved?
- Is there any reason why nothing has been heard from a debtor?
- Is all the evidence available that is necessary to prove the debt?

Consider:

- Instruction of debt collection agencies/solicitors
- Issue of court proceedings
- Is insolvency likely to give a better result?
- Mediation



Managing cash flow: SFRS

Veale Wasbrough's SFRS

- ▶ **Team of 11 specialist lawyers**
- ▶ **Membership of 400 independent schools and nurseries**
- ▶ **Currently handling nearly 2500 active debts totalling in excess of £3.6M**
- ▶ **33% increase in new instructions over last 12 months**





Managing cash flow: the court process

- ▶ **The pre-action protocol and letter before action**
- ▶ **Issue of proceedings**
- ▶ **Significance of allocation to track**
- ▶ **Obtaining judgment**
- ▶ **Enforcement of judgments**



Managing cash flow: Changes ahead

The Tribunals Courts and Enforcement Act 2007

- Debt Relief Orders – from 6.4.09 the Court can write off debts if the debtor's assets <£300 & amount of distributable income <£50 per month
- Proposals for future:
 - Charging orders – can obtain even if instalment plan in place; min debt amount to be introduced
 - AEO – method of calculation subject to “fixed deductions scheme”; court will have power to see new employment details from HMRC
 - Information Orders – Court can obtain info from other Govt departments and third parties
 - Enforcement Restriction Orders – preventing enforcement for max 12m

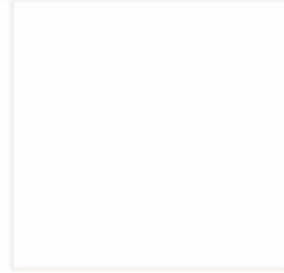
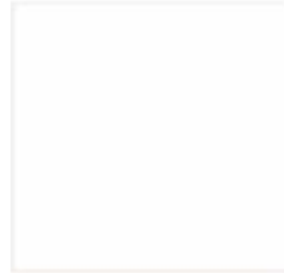
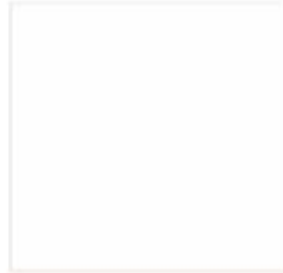
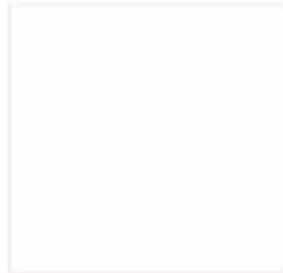
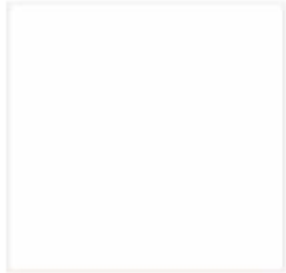


Managing cash flow: Effective debt recovery through the courts

Any questions?

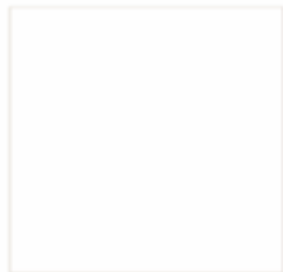
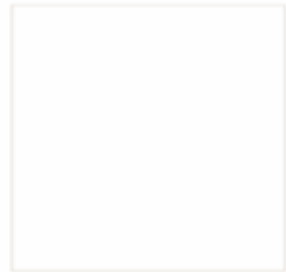
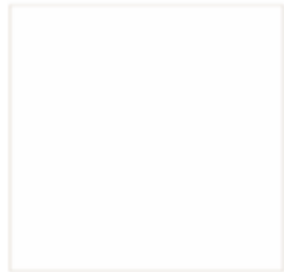


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