Taking the pain out of late payment

The economic downturn has brought the issue of late payment firmly into focus. Could the new EU directive make a difference?

Everybody wants to get paid on time. In an ideal world suppliers would never find it necessary to chase, fret or worry about overdue outstanding debtors but of course we live in the real world, rather than the idealised one.

It is true that in certain business communities and sectors (Scandinavia could be an example) this ideal is not too distant from reality and it would be interesting to consider why this is.

Late payments to SMEs are not of course a new issue and, very much like the weather, it could be said that everyone talks about it but no one does anything about it. Even so, the downturn and growing dominance of large multinationals has brought the issue to the fore.

It is in my experience something of a myth that large clients have only recently taken to treating their suppliers a little disdainfully but a greater awareness of the value of cash and the ability to manage has shifted the landscape, and now the EU want to do "something about it".

From this March there will be in place a directive, the key points of which to summarise briefly are:

- Public authorities obliged to pay no later than 30 days
- Commercial enterprises must pay no later than 60 days and unless expressly agreed otherwise
- Statutory charges for late payment and interest

Will this work?

The answer I am afraid is, bar point one perhaps, no. The most significant line is the second: "unless expressly agreed". Fine. And how is that defined? Let's consider a client's purchase order which states 90 days and which you as a supplier do not counter. That could be all it takes and it would be difficult to argue otherwise. It's a clause with an immediate get-out.

Penalties and interest to be enforced is of course a useful option and one that's been available in the UK (at least) since 1999. Has it made any difference?

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Unless a relationship is in its final stages and you as a supplier are feeling a little litigious, then the penalties and interest are simply going to be very painful to collect. Major businesses will operate tight purchase order and budgeting systems and, as a supplier, you may well be very aware of the consequences of not complying. Now try to get that order raised for the penalty and interest?

It is likely that that will be a painful process and not perhaps conducive to a comfortable client relationship. Furthermore, when you calculate the interest due, the sums might be particularly underwhelming.

That is difficult enough to deal with but at the front end of the transaction, unless you are strictly the only available supplier for your services, it is going to take some nerve to start repeating back EU legislation to your new major client.

Does that mean all is lost? Not at all. There is no reason why you should accept terms that you are uncomfortable with or that are simply not practical, but you have to negotiate in a reasonable manner, without threats. You may be surprised at how effective a reasoned approach can be.

The directive is well-meaning but would have to bought into culturally if it is to be routinely imposed. In Scandinavia this has to some extent occurred and maybe we will see the same in the UK, France, Spain and Italy, but if the EU cannot control its members' budgets, then can they control a culturally diverse free market?

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