



# Carter Bells

## Business Briefing

Summer 2009

# Doing Business in the Recession

Carter Bells serves many business clients and is well aware of how the current economic downturn has affected everyone. In our 150 year history we've helped many clients weather the storm through successive recessions and we know that if businesses review their procedures and keep a check on administrative and related matters they are doing themselves a big favour.

In tough business conditions, businesses need to anticipate problems and put measures in place to make sure matters

don't escalate. Just reviewing your terms and conditions of business, for example, can help you see where you need to tighten up so that your clients and suppliers are not taking advantage of loopholes.

Carter Bells has produced a checklist, available on request, called **Recession Tips for Businesses**, designed to help identify areas that may lead to concern and to head off potential problems. Call us on 020-8939 4000 and we will be happy to send you a copy.

We have information sheets on a range of other business subjects, some of which you can download from our website [www.carterbells.co.uk](http://www.carterbells.co.uk). If there's a particular subject you'd like information on, please let us know and if we don't already have one, we'll do our best to produce a sheet that answers your queries.

In the meantime, this newsletter highlights two areas of concern to many businesses—terms of consumer contracts and late payments.

## Consumer contracts

Most businesses supplying consumers know their terms are subject to controls under the 'Unfair Terms in Consumer Contracts' regulations. Terms that result in an imbalance of rights are considered to be unfair and therefore unenforceable. Many companies try to get round this by using 'read and understood' declarations (e.g., 'I confirm that I have read and understood this agreement and agree to the terms set out therein'). The Office of Fair Trading (OFT) is understood to frown on these clauses, as the supplier can claim that conditions have been read even if they haven't. A better option may be to have an acknowledgement along the lines of *'This is our standard agreement upon which we intend to rely; for your own information you should read it carefully before signing. If there is any point you do not understand, please ask for further information before signing'*. Whilst this wording still doesn't necessarily mean that your customers have read your terms, at least you will have done your best to encourage them to do so! In any subsequent dispute, therefore, you are less likely to be accused of having imposed unfair conditions on your customers.

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CARTER BELLS LLP — MAIN SWITCHBOARD NUMBER 020-8939 4000

**IMPORTANT NOTE:** INFORMATION GIVEN IN THIS NEWSLETTER IS FOR GENERAL REFERENCE ONLY AND SHOULD NOT BE CONSIDERED AS SPECIFIC ADVICE ON ANY TOPIC MENTIONED.

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# A simple solution to late payment problems

What do you do if your client or customer is late paying you? Businesses large and small have the right to claim interest and compensation on late payment once the debt is 30 days overdue. Businesses have, in the past, often been reluctant to exercise this right, but in the current financial conditions, it's time to get tough!

Interest applies on a late payment at the simple rate of 8% over the 'reference' rate; that's Base Rate as at 31<sup>st</sup> December and 30<sup>th</sup> June each year. This means that the rate you can charge until 30<sup>th</sup> June 2009 is 10%. This rate is, of course, generous and typically higher than that provided for in most commercial

agreements. In addition the creditor can claim fixed amounts such as reasonable debt recovery costs depending on the size of the debt.

The good news is that there are no forms to fill in – it's simply a matter of informing your clients or customers that you are entitled in law to claim these amounts in the event on non-payment, and that you intend to do so. This is best communicated within your terms of business and repeated on your invoices.

You could, of course, waive your right to charge interest, but if you do the law states there must be another 'substantial remedy' to compensate you for late payment.

Late payments need to be addressed as soon as possible; the longer they are left to drift, the more chance there is of their not being paid! Even if they are eventually paid, it's important for suppliers to keep cash flow moving.

*"Businesses ... have the right to claim interest and compensation on late payment"*

If you need help sorting out the wording for your terms of business to ensure you are protected as far as possible from late payers, please contact Richard Norris on 020-8939 4040.

## COMMERCIAL SERVICES

Carter Bells solves issues for businesses large and small. Refer to the list below for details of who to contact:

### Commercial disputes

Contract disputes • Debt recovery  
• Landlord & Tenant • Bankruptcy •  
Negligence • Licensing •  
Mediation

**John Field 8939 4002**

**Roland Pingree 8939 4015**

### Commercial property

Property development • Tenancy  
agreements • Site acquisitions •  
Project finance • Plot sales •  
Business leases • Lease renewals •  
'Fire' sales • Auction sales • Option  
agreements

**Andrew Thorne 8939 4030**

**Justin Pinches 8939 4022**

### Business matters

Terms of trading • Company  
formation/acquisition •  
Partnerships • Company sales •  
Business sales • Due diligence

**Richard Norris 8939 4040**

### Personal issues for business people

Divorce • Wills & probate

**Frank Horder 8939 4005**

**Margaret Gale 8939 4010**

## Carter Bells

Solicitors for

Your Family Your Home Your Business

[www.carterbells.co.uk](http://www.carterbells.co.uk)

Kings' Stone House, 12 High Street,  
Kingston upon Thames, KT1 1HD

Over 150 years in Kingston

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