



Credit crunch: one year on

For more information, please contact Tom Esler on 0845 55 55 321



By Tom Esler

One year after the collapse of Northern Rock, Tom Esler, partner and head of Commercial Litigation, explains what the credit crunch is and why, despite recent Government intervention into other high street banks over the last six

months, this phenomenon is continuing.

What is the credit crunch?

Effectively, 'credit crunch' is the phrase used to describe the current crisis in the banking industry.

It describes the situation in which banks and other investors have become reluctant to lend to one another. As a consequence, their ability to lend to their customers has been compromised, resulting in difficulties in obtaining credit or refinancing borrowing.

What caused the credit crunch?

At its most basic, the banking process involves banks lending their customers' deposits to credit-worthy borrowers. The interest earned enables banks to pay interest and earn profits. Recent demands for credit, however, meant that borrowings outpaced deposits, leading banks to increase their own borrowings from financial markets. Borrowings from the financial markets tend to be short term and the banks were required to regularly re-finance

those borrowings with new loans. As a result of the collapse in confidence triggered by worries about the strength of the banks and the economic downturn, banks have had significant difficulty in re-financing those loans. Effectively, the money has dried up.

What caused the collapse in confidence?

A downturn in the US housing market was the trigger for the collapse in confidence. For a prolonged period, lending standards in the US had been very lax. When that lending was shown to be suspect, the housing market collapsed. The global financial market, securitisation, and the collapse of the US housing market combined to cause global banking problems.

Article continues inside...

INCLUDES:

- Effects of insolvency on contracts of employment
- What happens if a tenant goes into administration?

- Keeping the taxman happy
- Extra pressure on families

Continued from front page...

What is securitisation?

The finance markets package up large numbers of loans such as mortgages into securities which can be traded among banks. The securities pay to the buyer an income stream generated from the interest and repayments on the underlying bundle of mortgages. The seller reduces their exposure to the risk of non-payment on those mortgages. This allows banks and other lenders to sell mortgages and then take them off their balance sheets, thereby enabling them to make new loans.

The lax lending standards resulted in inevitable default on mortgages and triggered the collapse in confidence in those securities, with the realisation of just how risky they were.

Why has the Government invested in so many banks?

The Government has stepped in to assist with refinancing those banks in trouble to ensure their liquidity and avoid bank collapse. Essentially, the Government is seeking to ensure banking liquidity and to restore confidence. This is why the Government has guaranteed deposits and effectively taken an equity share (ownership) in the banks.

Restoring confidence and getting the money markets working properly again is the key to preventing a vicious negative feedback cycle of lower investment, a weakened and a further reduction in confidence, and so on.

How long could this process last?

Unfortunately, market confidence itself is an intangible concept, which is difficult to measure. Market analysts, however, believe that given



Government intervention and the steps being taken by the banks themselves that confidence in the banking industry should be restored by mid-2009.

What are the consequences for businesses in the meantime?

Inevitably, the credit crunch, the collapse of confidence and the general economic downturn has had an impact on all business. The UK economy is itself now in recession and it is a question of how long that will last.

Reduced lending means lower investments by

households and businesses, and a weaker economy. In effect, the credit crunch will exacerbate the impact of any recession.

Cash flow will be king in 2009. All businesses will need to concentrate on good housekeeping and managing cash flow in order to stem the effects of the credit crunch and to recession-proof their business as far as possible.

Tom Esler is a Commercial Litigation and Insolvency lawyer. He is well placed to provide advice in relation to all aspects of Commercial Litigation including all aspects of Debt Recovery and Insolvency.

Effects of insolvency on contracts of employment

For more information, please contact Sally Morris on 0845 55 55 321



The state of insolvency in itself has no effect on a contract of employment, unless there is a contractual provision to the contrary. In reality, however, an insolvent employer will be unable to pay debts such as their employees' wages, which is a

breach of contract and can give rise to claims by the employees.

Where insolvency proceedings are in existence, a variety of circumstances can alter the status of employment contracts:

Receivership/administrative receivership/administration:

- Directors lose powers of control when receiver/administrative receiver/administrator is appointed
- Receiver/administrative receiver/administrator

becomes personally liable if, for example, they pay wages or engage new employees.

Corporate liquidation:

- Employment tribunal proceedings brought by employees will be stayed if commenced prior to the making of Winding Up order
- If employment tribunal proceedings are issued after Winding Up order has been made, they cannot be commenced or continued without the permission of the court.

Partnership insolvency:

- Employees can issue proceedings against individual partners who are not the subject of a Bankruptcy Order.

Employees are treated as preferential debtors in an insolvency situation. Certain payments are permitted to be recovered as preferential debts:

- Remuneration for up to four months prior to the date of appointment or an order ("relevant date").

This includes wages, sick pay, guarantee pay, maternity pay, medical or maternity suspension pay and protective awards

- Accrued holiday pay for any period prior to the relevant date
- Pension contributions
- PAYE & National Insurance contributions.

The term "employee" does not extend to self-employed contractors, temporary or casual workers.

Complex provisions regarding the validity of contracts of employment become effective where, as a result of the insolvency, the business entity in question is transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006. These regulations deal with the rules of enhanced unfair dismissal rights, preservation of transferring employees' terms and conditions and the provision of information and consultation.

Should you require any further advice on these complex matters, please contact Sally Morris, partner and head of Employment.

Extra pressure on families

For more information, please contact Mercedes King-Jones on 0845 55 55 321



By Mercedes King-Jones

With the predictions of a recession now a reality, and the 'credit crunch' really beginning to bite, for some families the economic downturn and the added financial pressures will be the final straw for relationships already in trouble. It is a sad

fact that despite the steady decline in divorces over the last decade, the divorce rate is now expected to rise again sharply, as it did during the last recession, with rising living costs, soaring debts and the threat of redundancy, undoubtedly pushing some relationships over the edge.

What happens when families are hit with the double whammy of divorce and the all-too-common bankruptcy of (usually) the husband, father and main breadwinner? The court is faced with a difficult balancing act between the competing interests of the husband's creditors, and those of his family. Often the only asset available to meet both the creditor's claims and the family's needs is, in fact, the family home.

Without a binding court order, any transfer of the home from a husband to his wife can be challenged by a trustee in bankruptcy up to five years after the transfer took place, despite the fact that the husband may have genuinely transferred his interest in good faith to provide for the housing needs of his former wife and their dependent children.

The recent case of Hill V Haines has provided some comfort, confirming that where there is no dishonesty or collusion between the husband and wife, and where a court has ordered or approved the transfer of the property, the husband's creditors cannot recover the property or its value in bankruptcy. However, the message is clear; if you are planning a transfer of the family home, or you are contemplating divorce, and bankruptcy is even a remote possibility, you should take urgent independent legal advice.

At mfg Solicitors, we have specialists who can advise on Insolvency as well as experts in our Family Finance team who can advise on divorce and financial issues. For further information or advice, please contact Mercedes King-Jones, partner and Head of the Family Division on 01905 610410, or email: mercedes.kingjones@mfgsolicitors.com.

What happens if a tenant goes into administration?

For more information, please contact Justin Parker on 0845 55 55 321



By Justin Parker

As the credit crunch continues to bite, and tenant companies are having more difficulty meeting their obligations and paying rent, there is a real chance that one of your tenants could go into administration. This has become more likely following recent changes

to the law and makes the landlord's position much more difficult.

When the market was more buoyant, and commercial tenants could easily be found, the first desire of the landlord was to get a problem tenant out! However, in what has been described by reputable commentators as the hardest commercial property market for 30 years, a landlord does not wish to be left with an empty unit to let.

So what should a landlord do and not do?

Firstly, if you do not wish to accept a surrender of the lease, and thereby a termination of the tenant's obligations, you should not accept return of the keys from the tenant or administrator. This could be deemed to be acceptance of a surrender of the lease and that the terms of the lease have come to an end. Steps can be taken to "clarify" the position with the tenant or the administrator to confirm that the keys are held to the tenant's order, are returnable on demand and will not be used by the landlord while the lease is in force. The landlord himself must ensure that the tenant's keys are not used and are carefully preserved.



Can a landlord demand rent while the administration is continuing?

Yes, provided the tenant remains in occupation, although there are very technical rules and arguments concerning other sums due and payable under the lease during an administration.

If the tenant vacates the premises, but the lease has not been formally surrendered, the landlord may be desirous of seeking an early replacement tenant. Care should be taken before marketing

commences since this again could suggest acceptance of a surrender of the lease. In some circumstances, an administrator may agree to an agent being appointed to market the property with a view to reducing the burden of rent upon the company in administration.

In every case in which a tenant goes into administration, the landlord would be well advised to obtain early and specialist advice because the risks of acting improperly or incorrectly are great and the financial consequences, severe.

- Company and commercial
- Corporate finance
- Mergers and acquisitions
- Commercial property
- Employment
- Commercial disputes
- Corporate tax

Keeping the taxman happy

For more information, please contact Alexander Hall on 0845 55 55 321



By Alexander Hall

A downturn in business or an unexpected tax demand can make meeting tax liabilities owed to HM Revenue and Customs (HMRC) more difficult than usual.

A creditor with a difference

Whether the liability is for PAYE or self-assessment income tax, VAT or corporation tax, HMRC is different to other creditors.

As HMRC is a continuing creditor of virtually all businesses and most individuals, it acts on principles of policy rather than commercial factors. The possibility of future default is as important as present liabilities to HMRC. Consequently, HMRC is more willing to institute court proceedings and pursue the option of bankruptcy or the winding-up of a company.

What to do

If the taxpayer is unable to pay a tax liability on the due date or disagrees with the amount demanded, the following should be considered:

- Submit a tax return. This may often be the only way to reduce a tax demand based on an estimate or 'determination' to the amount of the true liability. Seek professional assistance with the tax return if necessary;
- Is the tax demand late due to HMRC delay? In certain circumstances due to their delay, HMRC will write-off tax arrears;
- Have HMRC misinterpreted the law in assessing the demand? An appeal could be considered;
- If you have severe personal circumstances, HMRC may agree to 'remit' the bill and not pursue collection until a later date;
- In all cases, talk to HMRC about the problem – don't ignore it.

The 'Time To Pay' scheme (TTP)

TTP seeks to assist individuals and corporate

taxpayers with temporary financial difficulties. The taxpayer agrees with HMRC to pay in full over an extended period in instalments. During a TTP arrangement, the taxpayer is not liable to the normal 5 per cent late payment surcharges. However, rigorous conditions apply:

- The instalments may not be spread over more than three years;
- For TTP arrangements over a longer period than three months, HMRC will require details of income and expenditure or a financial budget for corporate taxpayers;
- The agreement must consider future liabilities as well as the outstanding debt;
- HMRC is more sympathetic to taxpayers with a good compliance record.

HMRC is a powerful creditor and an undesirable opponent. However, communicating while seeking professional assistance will increase the taxpayer's chances of keeping the taxman happy.



Coming soon...

In 2009, we plan to launch the ultimate advice and networking club for our clients and members in Worcester.

As well as providing the reassurance of legal advisers on tap, it is anticipated that the Business Club will provide our business and commercial clients with a means of accessing experienced, commercial Solicitors without the fear of incurring significant legal fees. It is also planned that the Club will meet as a forum at which the members will have an opportunity to discuss topical business issues

and hear topical business speakers on a regular basis.

The mfg Solicitors' Business Club will be launched in 2009. It will be headed by Tom Esler, partner and head of the Commercial Litigation division, based at the Halesowen Commercial Centre.

Full membership details will be published in 2009.

Watch this space...