No treats for lenders this Halloween?

By Daniel Fitzgerald

1. Who doesn't love Halloween? This year however it looks like the dreaded 'B-word' (Brexit sorry for mentioning it) is threatening to spoil the party. Our PM has vowed to achieve "Brexit" by 31 October do or die. Could that turn us into a zombie state?

2. Many commentators warn of the risk of a disorderly exit from the European Union. The only thing that is certain is that there will be uncertainty. As banks and lending institutions were the forefront of the banking crisis a decade ago, how will they cope if Brexit (whether disorderly or otherwise) brings another crash?

3. We are solicitors who trained and worked with the recoveries teams of a number of institutional lenders at the last crisis. We ask whether the sector is ready for the next tsunami, whenever that might be. We are seeing signs of storm clouds gathering again but not necessarily in the same places.

4. So should we be concerned? There have been plenty of scare stories. Big names who have raised concerns include Airbus; BMW; Vauxhall and the CBI. The latter has labelled a No-deal Brexit as "a tripwire into economic chaos". In a recent BBC Breakfast interview a Financial Times reporter memorably said that Brexit would administer a "punch in the face" to the economy.

5. Raising concerns is not an exercise in idle speculation or ‘project fear’. We do not need to look further than a Bank of England review prepared for the House of Commons Treasury Committee of November 2018. This attempted to put “flesh on the bones” of the effect a disorderly Brexit might have. The headline figures in that report would see a disorderly Brexit cause commercial property prices to fall by 48% and general house prices falling by 30% (as compared with respective falls of 42% and 17% during the global financial crisis).

6. A fall in property prices of this magnitude (or anything like it) would have a profound effect on the default rates of most lenders, even those with the most prudent practices. There are already signs of increased enforcement activity being taken within the lending community. We have seen a recent growth in professional negligence claims against valuers by way of example.

7. One of the trends that followed the global financial crisis was a change in the sources of finance to the ‘everyday business’. Traditional high street lenders reigned in lending, whilst ‘challenger banks’ and other newly formed lenders stepped into their place. A new breed of lending has evolved in this space. In 2009 ‘crowd funding’ was virtually unknown. In the years following the financial crisis, a form of lending reliant on technological advances (or ‘Fin-Tech’ to give it a catchy tag) has expanded rapidly. This has seen ‘peer to peer (P2P) loans’ facilitated by a raft of new online platforms that act as intermediaries between borrowers and individual lenders. These loans can be sophisticated and of high value. Funding Circle is perhaps the most known P2P platform and has sufficient gravitas to have recently been listed on the London Stock Exchange.

8. It is worth pausing to consider the growth of the Fin-Tech sector. In 2007/2008 P2P loans were effectively unheard of. Now the ‘P2P Finance Association’ (comprising of some of the leading players in the market) has reported “more than £850 million of loans facilitated” over the first three months of 2019 “taking the cumulative lending for the Association’s members to more than £10.5 billion”.

9. Traditional lenders will have learnt lessons from the last crisis. The new lenders however have not been there and got the T-shirt. They have grown in a benign economic climate with record breaking and consistently low interest rates and have yet to be stress tested. A disorderly Brexit could be a tough test. Prudent lenders will be keeping a close eye on political and economic developments.

10. The peer to peer sector has seen a few notable causalities in recent years with the collapses of Collateral (which entered into administration on April 2018) and recently, Lendy (entered into administration in May 2019). The sector has also been subject to increased scrutiny from the FCA. In June 2019 it announced that it would be introducing a raft of new regulatory requirements into the sector, the majority of these being introduced in December 2019. Together with the challenger banks this is a sector that needs to be primed to deal with increased defaults.

11. Prudent lenders looking ahead to Halloween will hope for the best and prepare for the worst. What preparation might be needed?

12. Having an experienced ‘Recoveries Team’ is an obvious starting point, as prevention is better than cure. Some of the teams we’ve had the privilege to deal with over the last decade will know the tell-tale signs of a loan where an exit route in not achievable. There is always a balancing act to be achieved between knowing how and when to exercise enforcement options with exercising forbearance and giving support. Knowing your options and being proactive is key.

13. And what if all of this is a little dusty? We’ll be happy to help. We regularly offer free training sessions to our lender clients at times and locations convenient to them. We will identify the tell-tale signs of distress and the strategies available to deal with these. We are always commercial and pragmatic in our approach.

Daniel Fitzgerald is a partner in our Litigation department. A commercial litigator with over 15 years’ experience, Daniel conducts high value recovery actions concerning borrowers and guarantors, including a number of reported cases in the High Court. Got a question for him? He can be reached by phone on 0161 833 6968 or by email, Daniel.Fitzgerald@glaisyers.com.

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