

# Kevills Solicitors

## Debt Management and Debt Collection.

A very rough guide!

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### **Debt.**

All but the very luckiest of businesses will at some point have a debt or debts that they will have difficulty collecting.

Debt is time consuming and a major threat to your business with its effect on cash flow.

The purpose of this presentation is to help you minimise the risk of not being paid for the work that you have done or the goods or services supplied to your customer.

## 1. First things first!

### Know your customer.

The number one problem with bad debts is identifying who the customer is.

Avoid confusion. A court summons issued against the wrong party is invalid!



In the UK the following are lawful trading entities;

Sole Traders

Partnerships

Unincorporated associations e.g charities

Incorporated associations ie Limited companies (private limited companies will have the suffix Limited or Ltd, public limited companies will have the suffix plc) or limited liability partnerships (suffix LLP)

Problems often arise with the first two who, quite lawfully, have a trading name but the sole trader/partners aren't properly identified and with limited companies when limited liability status isn't identified.

What you are looking for:-

Sole trader – Simon Robinson trading (or t/a) as Ripyuov

Partnerships – Partners names should be identified on correspondence.

Limited Company – Spivs Ltd or Letsavoyourstuff (for nowt) plc. Company number and registered office should also be identified.

First things first always find out who the customer is and if there is any confusion seek clarification. Companies House web-site is very useful for obtaining information about limited companies. A customer account opening form with the relevant questions that the customer fills in would be useful. Alternatively a checklist for staff to follow is essential.

This would be time very well spent, as I have said before it is the number one problem.

Note of caution. Be careful dealing with limited companies, particularly new ones. A limited company has limited liability for its debts. Therefore seek personal guarantees if you can and make sure you fix limited credit limits till trust is established.

### **Trading terms.**

Make sure that your customer knows your terms. Differing industries tend to have different tolerances but 30 days tends to be fairly standard. There is no legal force behind this so you are free to negotiate whatever terms you like with your customer such as payment up front at one extreme to 90 days at the other.

### **Making the bargain.**



Remember that a contract is made before goods are supplied. Terms and conditions on an invoice or even an order acknowledgement are of no value. Your terms and conditions (outside the scope of tonight's talk), including terms for payment must be made clear at the time of the agreement being reached. Again an account opening form would be an ideal place to specify that your terms and conditions prevail. So if you are supplying a customer based on a telephone order sales staff should be trained to advise customers that the sale is subject to your terms and conditions and identifying where they may be viewed, such as a web-site. A simple form completed by the telephone operator should be placed on the customer's file.

## 2. Debt collection



If all else fails and you find yourself with a bad debt and your trading terms have been exceeded then prior to Court proceedings you should, save in the most urgent cases, formally request payment in writing and keep a record of the letter/fax/e mail sent. This could be important later on if your customer pays after you have issued court proceedings and refuses to pay the court costs.

The letter is called the letter of claim or letter before action. The letter should state the amount of the debt, how it has arisen, the outstanding invoice numbers and the action that should be taken to avoid court proceedings. A letter such as this may suffice:-

Dear Mr Jones,

I am writing to you about our outstanding invoices numbered 123, 345 and 678, which despite requests remain outstanding.

I am writing to request payment within the next 7 days. If payment is not received in this time then further action will be taken without notice to you which may involve Court proceedings or us placing the matter in the hands of our Solicitors.

I hope that this will not be necessary and I look forward to receiving payment in the time stated.

Please ignore this letter and accept my apologies if payment has been made recently.

Yours sincerely,

One of our standard letters is as follows, which will follow the above in appropriate circumstances.

Dear Sirs,

**Re: Our Client:  
Amount due:**

We have been instructed by Nomessin Limited in respect of their outstanding invoice(s) which show that your debt presently stands at £3,000.00.

This debt remains outstanding despite requests for payment having been made.

Unless we receive cleared funds for the full debt due or we receive your reasonable proposals for payment by no later than 4pm on Tuesday 13th February 2007 we are instructed to issue proceedings without further notice to you.

Please note that if proceedings become necessary our Client will be entitled (in addition or in place of any contractual rights that may exist) to seek interest at the rate of 8% per annum calculated on a daily basis from the date the debt became due until the date the debt is paid. Present calculations show that the interest claimed will be in the sum of £150.00 and will continue to be added to the debt due at the daily rate from today of £0.66

Furthermore Court costs of £150.00 and legal fees of £80.00 will be added to the sum claimed by our Client should proceedings be issued.

Finally you should be aware that if our Client obtains Judgement against you your Credit rating may be adversely affected meaning that obtaining any goods on credit will be difficult if not impossible and you will find it very difficult indeed to obtain increased overdraft facilities with your bank or loans from your bank or other lenders. You may even find that your bank may demand repayment of all sums due to them.

In the circumstances we would urge you not to ignore this letter and you should immediately seek independent legal advice or the advice of debt counsellors or Insolvency practitioners if you are in any doubt at all as to the very serious consequences of ignoring this letter.

Yours faithfully,

KEVILLS

## **Court Proceedings.**



If there is no reply then we can proceed to issuing proceedings.

### **The Claim Form.**

To start any claim you have to complete the Claim Form.

It is important that the Claim form is completed correctly and that the parties are correctly identified, including you.

Where a limited company or plc is involved you should set out the registered office of the company and the company number.

### **Where to issue?**

Your local Court is open 10am – 4pm Monday to Friday and you can issue your claim in that Court or you can issue on-line at [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk). The Claim form can be completed on-line as can your request for Judgement and you can also instruct the Bailiff for debts below £5,000.00.

### **Fees.**

The Court fees for issuing Court proceedings are as follows;

To issue a claim form where your claim is for money only and the amount is:

up to £300	£30
£300.01 - £500	£50
£500.01 - £1,000	£80
£1,000.01 - £5,000	£120
£5,000.01 - £15,000	£250

£15,000.01 - £50,000	£400
£50,000.01 - £100,000	£700
£100,000.01 - £150,000	£900
£150,000.01 - £200,000	£1,100
£200,000.01 - £250,000	£1,300
£250,000.01 - £300,000	£1,500
over £300,000 or for an unlimited amount	£1,700

In addition if your Solicitor prepares the Claim form a contribution to those costs can be recovered, £80.00 in most cases.

If the debt is defended the debt will be transferred to the Defendant's home Court where the Defendant is an individual.

You can serve the proceedings yourself or you can ask the Court to serve. Either way the Defendant has 14 days from the date of service to acknowledge the proceedings and provided the proceedings have been acknowledged 28 days to file a defence.

If service isn't acknowledged or acknowledged but a defence isn't filed then Judgement can be entered.

Once you have judgement you can enforce it by:-

1. Instructing the Bailiff or Sheriff to collect the debt.
2. Obtain a Charging Order over the Defendant's property.
3. Seek repayment from a Bank Account (Garnishee).
4. Commencing Insolvency/Winding Up proceedings.

Further fees are payable to enforce the Judgement.

### **Defended cases (brief run-down)**

If the debt is defended the Court will send you a copy of the Defence and an Allocation Questionnaire. The Questionnaire will help the Court determine what will happen next with the claim and the Court will give directions for the future conduct of the case. A further fee is payable (£150.00).

The amount of the sum in dispute will determine what happens next.

Less than £5,000.00 Small Claims Track

Between £5,000.00 and £15,000.00 Fast Track

Over £15,000.00 Multi Track.

If the case is allocated to the Small Claims track the Court will give the case a hearing date and some brief directions to be complied with not less than 14 days before the hearing.

All but the most experienced with Court processes should obtain legal advice if the case is allocated to the Fast Track or Multi Track.

### **Insolvency**

Insolvency proceedings can be used not just as a method of enforcing a Judgement but as a tool for collecting a debt in its own right. In appropriate cases the Court process can be ignored and Insolvency processes used. This is a specialised subject however and I would not recommend proceeding without legal advice. For more information about this method of debt collection please take your Solicitor's advice or contact me.

### **Useful web-sites**

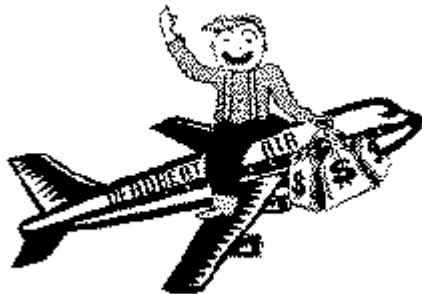
[www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

[www.moneyclaims.gov.uk](http://www.moneyclaims.gov.uk)

[www.companieshouse.gov.uk](http://www.companieshouse.gov.uk)

Finally if you are still not keen on collecting your own debts then I say this:-

## **BAD DEBTS?**



**Spend Your Time Making Money  
Leave the Collections To Me**

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