

### Introduction

This guidance note is to help you with the monitoring and control of the collection of debts.

1. Have you got an appointed person who follows up on debts?
2. Do your directors and managers get printouts of the debts over 60 days?
3. Are you keeping good debtor files for these debts with full notes of telephone calls, copy correspondence, copy invoices, up to date addresses and phone numbers of contacts?
4. Have you a system e.g. two phone calls and a visit before legal letter?
5. Have you used a legal letter? –see appendix.
6. Have you issued the forms to take a debtor to the small claims court? Everyone should do it once!

If you have answered yes to any of the above then this guidance will help you with the processes needed to recover debt.

### Monitoring

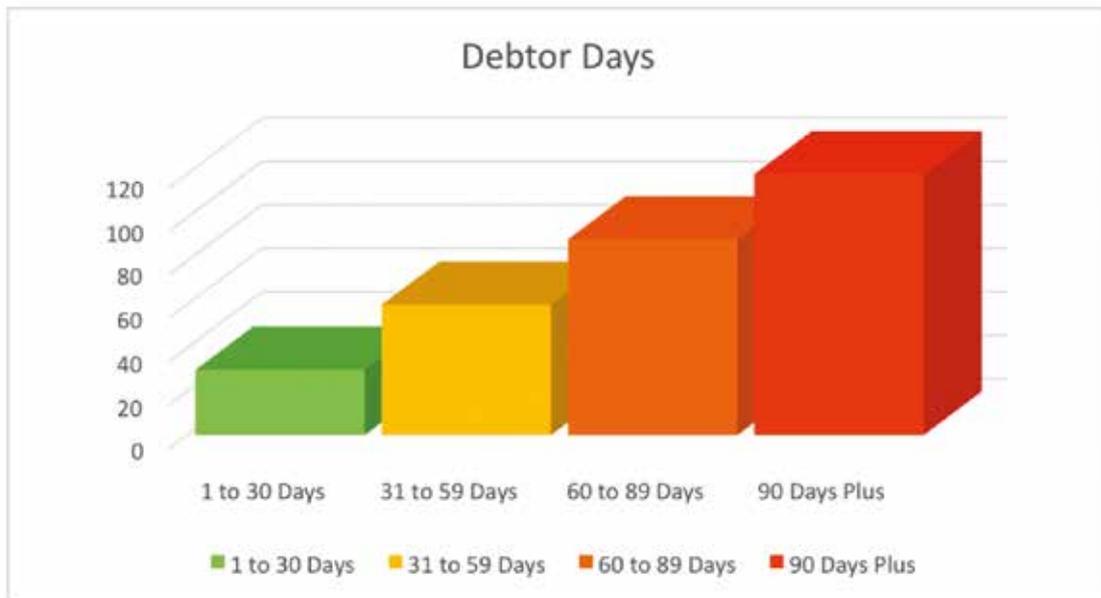
Within most organisations procedures are carried out on a regular basis to monitor the position of the customers. Having agreed credit terms with a customer, the credit manager / assistant, needs to monitor the debtors' ledger regularly to ensure that customers are abiding their credit terms. Those who do not meet your terms will need to be investigated to find the cause of the problem. The credit manager / assistant will need to liaise with other managers / supervisors to ensure a consistent approach is adopted towards the customers.

The credit manager will need accurate and up-to-date information to check that the debts are recoverable and customers are keeping to their agreed payment terms.

Prior to chasing any debt the credit manager / assistant must ensure that all payments that have been made to the company are up-to-date on the ledger, that all invoices and credits are processed and whether there are any site issues prior to commencing the chasing process.

Your invoice/application and statements procedure may be different for each company. Whether you invoice daily, weekly, fortnightly or monthly depends on the project and the client's requests. Invoices / applications must state clearly the customer's order number; the site address; terms of payment including banc details; running gross total (for sub-contract applications); invoice number, date, and customer account number/ reference in order to speed up settlement.

The debtors analysis is a useful report for managers to view the old/slow paying debtors. The report is usually produced monthly alongside the monthly statements.



The report splits the total balance into differing age categories, as demonstrated above.

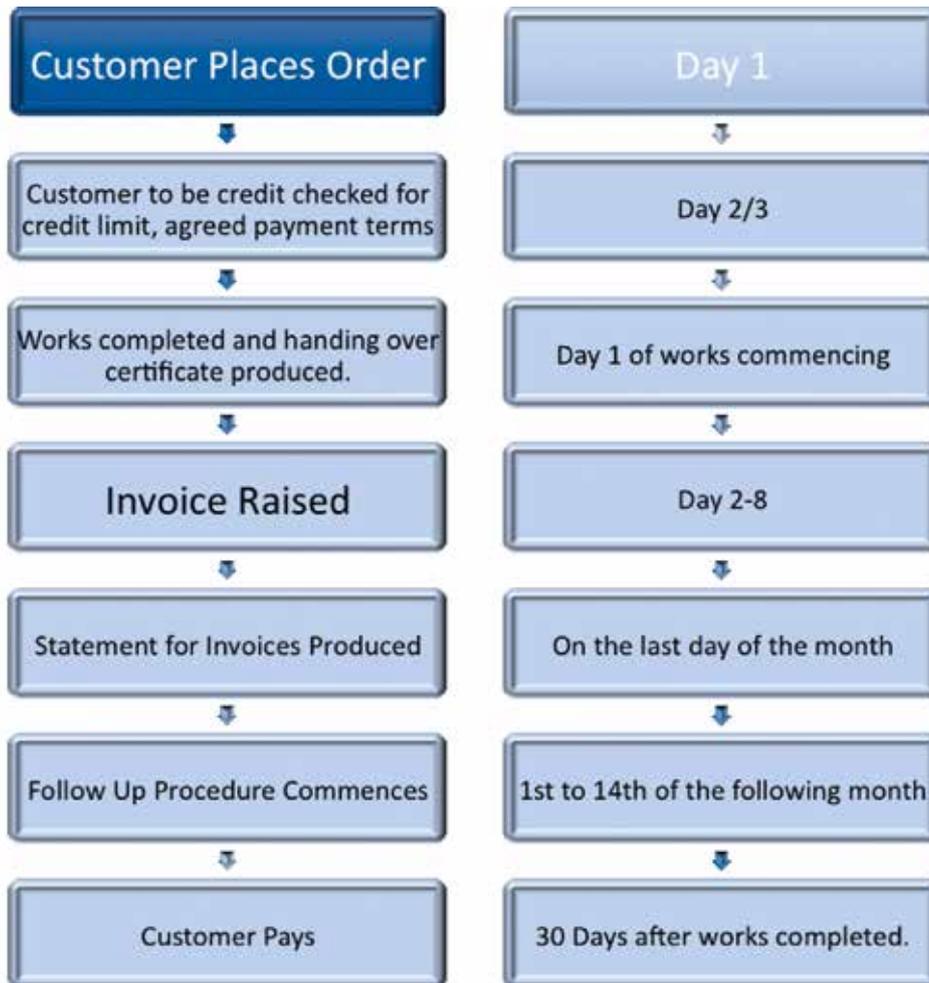
- Amounts less than one month old. Current month
- Amounts between one and two months old. Usually accounts due for payment
- Amounts between two and three months old. Late payments that need to be chased.
- Amounts older than three months old. These amounts should already be chased by your account team but need to be investigated urgently and further action applied.

## Collection

The collection of cash starts by sending invoices and statements. Many customers do not pay their invoices promptly and a polite reminder is often needed. Other customers require more than a gentle reminder and it may be necessary to take legal action to obtain payment from certain customers. It is important to have a planned approach to non-payment problems to ensure that the company's cash flow is not severely affected. The following sequence of events should be effective:

- Identify the problem – The problem will need to be identified, in terms of the value of unpaid accounts, the number and age.
- Allocate responsibilities – This problem will need to be then be broken down into manageable units and individuals given responsibility to collect in the debts from each unit,
- Plan of action – A plan of action will need to be agreed. This may including visiting, phoning, faxing, emailing, and sending reminders and other suitable techniques to encourage payment.
- Monitor – The results of these actions will need to be monitored and reported to managers who can take legal action if necessary.

## The Plan of Collecting Debt for Invoice



## The Plan of Collecting Debt for Self-Billing



### Method of encouraging payment

The length of the follow up period will depend on whether the customer has merely overlooked the payment or is trying to extend payment terms. As a result the follow up period may go on for some time during which the following procedures can be used to persuade the customer to pay their bill.

- Telephone calls to contracts manager; quantity surveyors; accounts department; senior managers within the company such as the Managing Director.
- Site visits
- Collection letters
- Agreed payment plan.
- Court action and/or arbitration

## **1. Visits to the debtors**

When visiting the debtor try and assess their ability to pay and also sort out any issues regarding the held back of money. There may be an administrative problem. Plan your visits carefully by bringing constructive attention to the queried invoices/work and follow up visits may be necessary to resolve the issue. If the customer refuses to co-operate and does nothing to investigate the problems, then the whole process can be very frustrating.

Things to remember:

- (a) Plan the meeting by making an appointment to see someone in authority
- (b) Prepare your facts of the debt carefully prior to the meeting by having copies of a summary of all the works and any supporting documents, copied, with you.
- (c) Make the most of the visit, look at how the site is developing, is the contract behind schedule. Look at the staff attitudes. You can normally tell if a site is under stress and you are not the only contractor not being paid.
- (d) Find out why the account has become overdue and try to identify what steps the client is taking to avoid a repetition of the problems
- (e) Conduct the meeting firmly and politely whilst remaining responsive to the problems and queries.

## **2. Telephone calls**

Telephone calls are a quick way of making personal contact and of obtaining an immediate response. It's also a much quicker method than visiting customers; however, to be effective, the same approach needs to be adopted;

- (a) Planning and preparation
- (b) Contacting the right person which sufficient authority to act
- (c) Adopting the right tone to persuade the customer to pay
- (d) Concluding the call with an agreed plan.

Clients may employ delaying tactics, such as asking for copy invoices, which must be supplied promptly, but the caller must be receptive to signs of possible problems, e.g.

- (a) The customer says he/she is unable to pay or promises to send a part payment
- (b) Promises are persistently broken
- (c) Contra claims are made
- (d) Agreed points / plans are ignored and promises are broken
- (e) You cannot reach a person to talk to and the customer become illusive

## **3. Collection letters**

Collection letters are a quick and relatively easy way of contacting overdue debtors. Each letter must convey the outstanding points, namely that the debtor is late in paying its debt and the debtor is in breach of contract and credit terms and lastly that the payment is therefore due immediately.

A final letter may be sent out if there is no response to the first letter. There is often little point in pursuing the debtor with many letters and sometimes a threat of legal action will result in prompt payment.

If further action is threatened, then the company must be prepared to carry out the threat whether it be to instruct the courts to proceed with the action, to instruct your solicitors, stop works on site, or hand over to a debt collection agency all these options are yours to decide. You may address this to either the individual, company or managing director / company secretary's home address.

**Statutory Demand:** For details regarding the procedure for issuing, or challenging, a Statutory Demand please visit <https://www.gov.uk/statutory-demands/challenge-a-statutory-demand>

#### 4. Court action

When all forms of communication has stopped and you then need to process the matter further you can process to court action either through you solicitors or direct via the government website: <https://www.moneyclaim.gov.uk>. You can login using your HMRC government gateway details.

**The types of claim you can make online must be:** for a fixed amount of money less than £100,000; against no more than two defendants (people or organisations); served to a defendant or defendant(s) with an address in England or Wales

**To make a claim online, you need to have:** a valid credit or debit card to pay the court fees; an address in the United Kingdom; an email address; regular access to a computer and the internet

**What you cannot do using MCOL:** under 18; eligible for legal aid or help with fees; making a claim for compensation for an accident or injury; prevented the court from making claims to harass other people; issue a joint warrant of control against two defendants at the same time on a two defendant case where judgment exists against both defendants.

**You cannot use MCOL to make a claim against:** a child under 18; someone who lacks mental capacity or someone who is unable to make their own decisions; the Crown or Government departments (including HMRC); an individual or company as a result of a tribunal award; claims relating to the Tenancy Deposit Scheme.

To make an online claim you will need to have the following information:

- (a) The name of the person or organisation you wish to make a claim for. A sole trader is an individual and not an organisation. To enter a sole trader as a defendant, select 'Individual'. In the 'Surname' box type their surname followed by either 'T/A' or 'trading as' and then their trading alias (you will also need to provide their forename / title in the relevant fields). E.g. J Bloggs T/A J Bloggs Builders, then the address.

For claims against more than two defendants you should contact the County Court Money Claim Centre. If you want to issue a claim with two defendants you will need to click the 'Add a 2nd defendant' button. Please note that each individual should be listed as a separate defendant. For example, if you were issuing a claim against a husband and wife, they need to be listed separately as the first and second defendant and not on one line as "Mr and Mrs"

- (b) details of the claim, such as, date of the invoice(s); dates of when the scaffolding was erected, handed over, hired, altered and then dismantled (if the scaffold has not been dismantled supply as much information as possible);
- (c) dates of when you chased the debt (when you issued the 7 day notice);
- (d) Put in the full amount due to you, then the interest calculation. Please revert to CG7:16 Late Payment of Commercial Debt to work out how to calculate the interest.

For a successful court claim you need as much information as possible to give to the courts. The claim will be issued within 2 working days from the date you submit the claim and you will be posted a notice confirming the issue date. You can also check the issue date by logging into your MCOL account and accessing the 'Claim Overview'.

The defendant has 14 calendar days from the 'date of service' to file a response. If the last day for filing the response falls on a day that the court is not open (i.e. a weekend or public holiday), the court will allow the next full working day until 4pm for a response. The defendant can extend the time to respond to 28 calendar days by filing an acknowledgment of service (AOS). You will be forwarded a copy and the 'Claim Overview' section online will also be updated.

If the defendant admits the entire claim and you wish to accept this response and make an Order for repayment, you may continue to request judgment online. If however, you do not agree with the repayment method the defendant has offered (or if they have not made an offer) you may ask the court to 'determine' the judgment (decide the instalments the defendant should pay). Please note that you cannot request to do this online.

If the defendant has not responded to your claim within the allowed time, or they have sent you an admission form and you are willing to accept their offer of payment, you can request judgment via the MCOL website.

For more guidance on how to process a claim please visit: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503066/money-claim-online-user-guide.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503066/money-claim-online-user-guide.pdf)

## 5. Alternative Dispute Resolution (ADR Regulations 2015)

This is a term used to describe different methods to resolve legal disputes outside of the court. It is a voluntary process and parties can still choose to take further court action if they does not reach a mutually acceptable solution. There are various types of ADR processes and depending on size, complexity and value of claim; parties can decide to use whichever of the methods available would most effectively resolve the dispute.

### (a) Arbitration Act 1996

An impartial and independent third party that decides how to resolve the dispute. In most cases, the arbitrator's decision is binding and cannot be challenged in the courts. The arbitrator's decision must remain secret unless all parties agree otherwise. The cost may vary. A list of certified ADR providers, and the sectors they cover, can be found at: <http://www.tradingstandards.uk/ADRbodies>

### (b) Adjudication

Similar to arbitration, but usually *not binding* on the person making the complaint. Most adjudication schemes are free to consumers.

Please review CG10:16 for details and the procedures of adjudication.

### (c) Mediation or Conciliation

This is an impartial and independent mediator or conciliator who helps the parties negotiate a resolution to the dispute. If the parties do not want to negotiate in person, a mediator may act as go-between. Everything that occurs during mediation or conciliation remains confidential and cannot be used in a later court hearing. The cost varies: in some instances, (usually conciliation), it is free; in others, it can get expensive – again, everything depends on the nature and complexity of the dispute.

The government does have a site for mediation and help for this. You can log onto <http://civilmediation.justice.gov.uk/> and you can find a mediator who is registered and local to you. There is also the Civil Mediation website and you can find a registered mediator in your area, also help and guidance in relation to mediation <http://www.civilmediation.org/>.

### (d) Negotiation

The simplest form of ADR. Negotiations may be held *with* or *without prejudice* (the latter prevents evidence of negotiations being used in court).

**(e) Ombudsmen:**

Ombudsmen investigate and resolve complaints about public and private organisations. Members of the *British and Irish Ombudsman Association* are guaranteed to be independent and impartial from the organisations they investigate. Most ombudsmen expect you to exhaust an organisation’s internal complaints procedure before seeking help. Most ombudsmen decisions are *not legally binding* on the complainant. All ombudsman schemes are free.

For more information on the above the NASC has its own contractual advice service. Please view: <https://www.nasc.org.uk/information/contractual-advice/> for more details.

**Conclusion**

It’s better to attempt to find a solution than to progress to either court action or ADR. If the relationship is still amicable, it may be worth offering a gesture of goodwill but also make sure your client doesn’t take advantage of you. This does depend on your own personal circumstances but there can be a variety of reasons why clients may be late in paying. By taking a proactive approach and ensuring you’re aware of the risks can save you time and stress later on.

# Seven Days' Notice for Payment

**Date:** Insert today's date

**Ref:** insert your quote reference

[insert client's company name]

insert 1<sup>st</sup> line of address which you have quoted and invoiced to

insert 2<sup>nd</sup> line of address

insert 3<sup>rd</sup> line of address

Postcode

Dear Sir or Madam [or insert the MD's name]

Despite our repeated requests for the immediate settlement of your overdue account, the debt remains unpaid. Details of invoices now overdue are given below.

We are sorry to have to inform you that if the overdue payment is not received by BACS/Internet banking or card payment into our bank, within the next 7 days from the date of this letter, we shall, without further notice, take legal action to recover the debt and all costs and interest are to be borne by you.

## **This is our final payment reminder**

<b>Invoice Reference</b>	<b>Date</b>	<b>Site &amp; Detail</b>	<b>Value Inc. VAT</b>

Yours faithfully

Your Name

POSITION WITHIN COMPANY – MD or senior manager



# LETTERHEAD

TO:

[insert client's company name]

at

insert 1<sup>st</sup> line of address which you have quoted and invoiced to

insert 2<sup>nd</sup> line of address

insert 3<sup>rd</sup> line of address

Postcode

And

Insert 1<sup>st</sup> line of address which is the company's head office

insert 2<sup>nd</sup> line of address

insert 3<sup>rd</sup> line of address

Postcode

WE [insert your company's full trading name] HEREBY GIVE NOTICE under clause 4.9.2 of the JCT Design and Build Sub-Contract conditions 2011 that you have failed to make the payment which was due on [insert the date that the payment was due as per your payment schedule or agreed dates] under a subcontract dated [insert date of the subcontract agreement] made between [insert client company name] (1) and us (2) to premises known as [insert site address] and point out the consequences, under the terms of the said subcontract, of your failure to make payment within the period of five days next following this Notice.

A payless notice **has not** been issued within accordance with clause 4.10.8 of the said sub contract.

Or

The payless notice that was issued to us on [insert the date] does not set out, in adequate detail, the basis for the sum stated to be due. Therefore, the amount due will be the amount in the interim application as per clause 4.9.3 of the said subcontract agreement.

We are sorry to have to inform you that if the overdue payment, by clear funds in our bank, is not received by CHAPS/Internet banking within the next seven days from the date of this letter, we shall, without further notice, take legal action to recover the debt and all costs and interest are to be borne by you.

**We reserve the right after this date to remove any of our equipment from site and/or stop works on site.**

**This is our final payment reminder.**

Total amount overdue  $\pounds$ Amount before VAT +  $\pounds$ VAT Amount =  $\pounds$ total amount outstanding

DATED: [today's date]

SIGNED \_\_\_\_\_

[Insert your name]

Director

Bank Details: Name of account

Sort Code: ??-??-??

Account Number: ????????



**NASC**

*Please note:*

You should have received a payless notice for any payments not being paid if this has not been received then the subcontract order has not been followed.

You may have signed a contract which is not JCT. Check the payment section and amend this letter accordingly by amending the clause numbers and if it does not state pay less notice then remove this section of the letter.

You may wish to send a copy of this letter to the company secretarys or managing directors home address.

*Whilst every effort has been made to provide reliable and accurate information, we would welcome any corrections to information provided by the Writer which may not be entirely accurate, therefore and for this reason, the NASC or indeed the Writer, cannot accept responsibility for any misinformation posted.*



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