

Free seminars for
2019 to help you
navigate the most
effective route
to success

D.I.Y. instructions on
the correct way to issue
court proceedings

Supporting the needs of
Owner Managed Businesses

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Introduction

The key focus of the seminar will be how to issue court proceedings in debt actions i.e. pursuing customers for unpaid (goods/services).

The following areas will be explored:-

1. The pre-requisites to issuing court proceedings
2. Initial considerations before drafting proceedings
3. How to draft the proceedings
4. Common mistakes
5. Top tips



Pre-requisites to issuing proceedings

Previous seminars have looked at:-

1. Pre-Action Protocol for Debt matters
2. Suing the correct legal entities

Before getting into a position to drafting court proceedings and issuing them, consideration must be had to these two areas.

You cannot issue proceedings if you do not know who your customer is and without giving them a reasonable opportunity to “pay up” before pulling the trigger.

Copies of Notes to these topics are available by contacting me.



Know Your Customer (“KYC”)

Who is your customer?

1. Individual or sole trader
2. Partnership
3. Company

It is important that you formally address your claim against the correct legal entity.

This becomes even more crucial when issuing proceedings.

You will have potentially costly problems if you issue proceedings against the incorrect party.



Pre-Action Protocols

Before issuing proceedings, the Civil Procedure Rules makes clear that you must write to your customer warning them that proceedings are being considered if they fail to pay.

Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to –

- a) understand each other's position;
- b) make decisions about how to proceed;
- c) try to settle the issues without proceedings;
- d) consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
- e) support the efficient management of those proceedings; and
- f) reduce the costs of resolving the dispute.

(Paragraph 3 PDPAC)

Because experience counts.



Two relevant Protocols

1. The Pre-Action Protocol for Debt applies to “any business (including sole traders and public bodies) claiming payment of a debt from an individual (including a sole trader)”
2. The Practice Direction for Pre-Action Conduct – this Protocol applies to all claims and is therefore relevant to claiming payment of a debt in B2B relationships.

The common theme and purpose of these Protocols is to write to the debtor and set out the reason for the debt with supporting documents e.g. copy contracts, purchase orders, delivery notes, invoices.

Give a reasonable opportunity to respond.



You know who your customer is and you have complied with the Protocols – what next?

The “last resort” – do not pursue a debtor through the Courts unless all other avenues have been exhausted including without prejudice discussions. If all else fails.... there are broadly speaking two options.

Insolvency proceedings

- a) For an individual owing at least £5,000 – bankruptcy proceedings;
- b) For a company owing at least £750 – winding up proceedings.

NB. – Insolvency proceedings are only suitable for debts that are undisputed. You cannot petition for bankruptcy or threaten winding up proceedings if you are aware that the debt is disputed on bona fide and substantial grounds”.



Issue Court proceedings

Common misconceptions

“I want you to enter a CCJ against my customer...”

- You cannot simply enter a CCJ – you must first prove that you are entitled to payment.

“I want you to take my customer to the small claims court...”

- There is technically no such thing as the small claims court. There is a small claims procedure. This procedure is relevant to pursuing claims in the County Court for values of £10,000 or less.



Initial considerations before drafting proceedings

1. Ascertain the solvency of the debtor – why?

No point throwing good money after bad – check your debtor is solvent and there is money to be had.

2. Frontload the case i.e. gather all relevant information – what information?
 - a) Invoice
 - b) purchase orders
 - c) order acknowledgements
 - d) delivery notes
 - e) credit application form/contract/terms and conditions
 - f) Personal Guarantees?
 - g) copies of relevant correspondence dealing with “dispute”

Why is information gathering important?

- It assists you identifying any potential weakness in your proposed claim
- If your claim is evidentially deficient then it assists your assessment on prospects of success.
- You will need some of this information in order to draft the court papers!

Because experience counts.



3. What is the value of your claim? Why is this important?
- The value of your claim is one factor that determines which court proceedings are issued in i.e. County Court or High Court
 - The value of your claim will determine which track the claim is heard on.
 - £10,000 or less = small claims track – less formal and “no costs” rule
 - £10,001 - £25,000 = fast track – more involved evidentially with cost implications
 - £25,001 upwards – multi track – more involved evidentially with cost implications and more than one day trial.
 - You must know the value of your claim in order to calculate your interest entitlement and the court issue fee.



4. What is your cause of action?

- A claim for debt is essentially a breach of contract claim i.e. you have offered goods or services in consideration for payment and your customer has accepted the offer by receiving the goods/services.
- Bounced cheque claim – known as the “cheque rule”. This is a distinct cause of action. Under the Bills of Exchange Act 1882, you can be held liable for payment of a cheque merely by the fact that you signed it unless there is a failure of consideration or fraud.
- Other causes of action include tortious claims (negligence) and statutory claims such as misrepresentation.



Brief lesson in contract law

In order to establish an entitlement in law to a debt you will need to establish and demonstrate that there was a contract between you and the customer and that it has been breached.

Essential components

- Offer of goods and services
- Acceptance of the offer by the customer
- Consideration – i.e. the price agreed for the supply of the goods/services.

You will need to bear all of these elements in mind when drafting the claim form and particulars of claim.



Drafting the Claim Form

We are now ready to prepare court papers to commence proceedings

Which Claim Form?

For Debt Claims the Civil Procedure Rules dictate that we use Part 7 proceedings. The relevant claim form is stipulated to be N1.

Because experience counts.



Completing Form N1- Page 1

Step 1

 **Claim Form**

In the County Court Money Claims Centre

Fee Account no. _____
Help with Fees - Ref no. (if applicable) H W F - [] [] - [] []

For court use only

Claim no. _____
Issue date _____

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

Claimant(s) name(s) and address(es) including postcode

Sparks Limited
1 Spark Road
Sparkstown
SP22 1SP

 SEAL

Defendant(s) name and address(es) including postcode

Crooks Limited
1 Crooks Road
Crookstown
CR11 1CR
(Company Registered Office)

Brief details of claim

Claim for invoice debt plus interest and late payment compensation
Value _____

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance)

County Court at Luton

Defendant's name and address for service including postcode _____

	£
Amount claimed	_____
Court fee	_____
Legal representative's costs	_____
Total amount	_____

For further details of the courts www.gov.uk/find-court-tribunal.
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06.16) © Crown Copyright 2016

Step 2

Step 3

Step 4

Step 5



Completing Form N1 – Page 2

Step 6 

Claim No.	
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Does, or will, your claim include any issues under the Human Rights Act 1998? Yes No

Particulars of Claim (attached)(to follow)

1. On or around 28 December 2018, the Claimant entered into a contract for the sale of 50 circuit boards (the "Goods") to the Defendant. Attached to these Particulars are copies of the credit application form; terms and conditions, sales quote, purchase order, order acknowledgment at Annex A.
2. The Claimant agreed to sell and the Defendant agreed to buy the Goods for the sum of £5,000 plus VAT.
3. The Claimant subsequently delivered the Goods to the Defendant at its registered office on 3 January 2019.
4. Following delivery, the Claimant issued an invoice to the Defendant (Invoice 001) with payment terms of 28 days from 1 January 2019 (Annex B).
5. In breach of contract, the Defendant has failed to pay Invoice 001 in part, or at all.
6. Prior to issuing proceedings, the Claimant sent a Letter of Claim to the Defendant demanding payment.
7. In the circumstances, the Claimant claims the sum of £5,000 plus VAT (£6,000) from the Defendant.
8. Further, pursuant to clause 3(c) of the Claimant's terms and conditions of sale, the Claimant is entitled to interest from 29 January 2019 to 7 March 2019 at a rate of 8% per annum amounting to £50.16 and continuing at a daily rate of £1.32 until judgment or payment in full.
9. The Claimant also claims late payment compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 in the sum of £70.

AND THE CLAIMANT CLAIMS:

1. £6,000
2. £50.16 interest
3. £70 LPCD fixed compensation

Statement of Truth
*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true. * I am duly authorised by the claimant to sign this statement

Full name _____

Name of claimant's legal representative's firm _____

signed _____ position or office held _____

*(Claimant)(Litigation friend) (if signing on behalf of firm or company)
(Claimant's legal representative) **delete as appropriate*

Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

[Print form](#) [Reset form](#)

Because experience counts.



Calculating interest

To calculate this, use the steps below:

1. Work out the yearly interest: take the amount you are claiming and multiply it by 0.08 (which is 8%).
2. Work out the daily interest: divide your yearly interest from step 1 by 365 (the number of days in a year).
3. Work out the total amount of interest: multiply the daily interest from step 2 by the number of days the debt has been overdue.

For example, if you were owed £6,000.00 and the amount had been outstanding for 38 days:

- the annual interest would be £480.00 ($6000 \times 0.08 = 480$)
- you would then divide £480.00 by 365 to get the daily interest: about £1.32 a day ($480 / 365 = 1.0315$)
- after 38 days this would be £50.16 ($38 \times 1.32 = \underline{\underline{£50.16}}$)



Late Payment of Commercial Debts (Interest) Act 1998

Section 5A

Compensation arising out of late payment

- 1) Once statutory interest begins to run in relation to a qualifying debt, the supplier shall be entitled to a fixed sum (in addition to the statutory interest on the debt).

- 2) That sum shall be –
 - a) for a debt less than £1000, the sum of £40;
 - b) for a debt of £1000 or more, but less than £10,000, the sum of £70;
 - c) for a debt of £10,000 or more, the sum of £100.



Completing Form N1 – Page 1

Step 7 

 **Claim Form**

In the County Court Money Claims Centre

Fee Account no. _____
Help with Fees - Ref no. (if applicable) **H W F** - [] - [] - [] - []

For court use only

Claim no. _____
Issue date _____

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

Claimant(s) name(s) and address(es) including postcode
Sparks Limited
1 Spark Road
Sparktown
SP22 1SP

Defendant(s) name and address(es) including postcode
Crooks Limited
1 Crooks Road
Crookstown
CR11 1CR
(Company Registered Office)

Brief details of claim
Claim for invoice debt plus interest and late payment compensation

Value
£6,000 plus interest of £50.16 plus LPCD fixed compensation of £70.00

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance)
County Court at Luton

Defendant's name and address for service including postcode

	£
Amount claimed	6,120.16
Court fee	455.00
Legal representative's costs	
Total amount	6,575.16

For further details of the courts www.gov.uk/find-court-tribunal.
When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06.18) © Crown Copyright 2018

 Step 8

Because experience counts.



Common mistakes

- Getting the debtor's name wrong – ensure you check the name against Companies House, contract, purchase orders
- Not claiming interest – if an invoice is late you are entitled to interest! If there are not contractual provisions dealing with interest then you are still entitled to statutory interest – claim it.
- Failure to plead a cause of action – if someone has breached a contract then plead it – demonstrate all elements. If they have also bounced a cheque – plead it in addition to breach of contract.
- Barton v Wright Hassell – Litigants in person are not exempt from compliance with Court Rules and Procedures. Do not expect to get leniency from the Courts.

“...lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to [LiPs] a lower standard of compliance with rules or orders of the court... The rules do not in any relevant respect distinguish between represented and unrepresented parties.”

Because experience counts.



Top Tips

- 1) Check your customer is solvent before going to the expense of issuing proceedings.
- 2) A warning shot - send draft proceedings to your customer before issuing proceedings.
- 3) Claim LPCD compensation and interest – you are entitled to it and it gives you a negotiating tool.
- 4) Issue against all liable parties – If there is a Personal Guarantee in place then issue against the company and the individual at the same time.
- 5) Meet deadlines – you have 6 years from the due date to claim payment for invoices. Once you issue proceedings ensure that you promptly request Judgment in default.



QUESTIONS



Claim Form

**In the County
Court Money
Claims Centre**

Fee Account no.

Help with Fees -
Ref no. (if applicable)

H W F - -

For court use only

Claim no.

Issue date

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

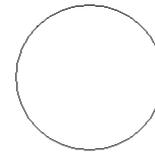
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Sparks Limited

1 Spark Road

Sparkstown

SP22 1SP



SEAL

Defendant(s) name and address(es) including postcode

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Crookstown

CR11 1CR

(Company Registered Office)

Brief details of claim

Claim for invoice debt plus interest and late payment compensation

Value

£6,000 plus interest of £50.16 plus LPCD fixed compensation of £70.00

You must indicate your preferred County Court Hearing Centre for hearings here (*see notes for guidance*)

County Court at Luton

Defendant's
name and
address for
service including
postcode

£

Amount claimed	6,120.16
Court fee	455.00
Legal representative's costs	
Total amount	6,575.16

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

Does, or will, your claim include any issues under the Human Rights Act 1998? Yes No

Particulars of Claim (attached)(to follow)

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Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true. * I am duly authorised by the claimant to sign this statement

Full name _____

Name of claimant's legal representative's firm _____

signed _____ position or office held _____

*(Claimant)(Litigation friend)

(if signing on behalf of firm or company)

(Claimant's legal representative)

**delete as appropriate*

Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.