# STAGE MANAGEMENT ASSOCIATION

# Fact Sheet for Invoicing & Managing Late Payment.

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## Foreword & Disclaimer

This fact sheet looks at invoicing for work and managing late payment.  It does not look at employment law. Neither the author nor the Stage Management Association is legally trained and this fact sheet only offers an untrained overview of UK Law and advice on best practice at the time of writing. If legal advice is needed you are advised to speak to someone suitably qualified and experienced.

## Contracts

The Stage Management Association periodically run a training course on Contracts and it provides an overview of UK Contract Law.

You should be aware that a verbal contract is binding; the trouble is proving what was said. In the absence of a formal contract, an email would be better than nothing. If you are approached for work and it is agreed that you should 'just pop in an invoice at the end', it would be wise to ask them to put the information in writing, including what you will be paid.

If you feel uneasy asking you could excuse it away as you don't have your notebook to hand or are at the supermarket etc.. If you don't receive anything from those looking to use your services, you can always write an email yourself which summarises what you think has been agreed. Silence, however, is not acceptance, "unless I hear to the contrary" does not bind, but you can ask "let me know if you agree". If they do reply agreeing or even altering details, you then have something in writing.

## Invoicing

Businesslink.gov.uk is a very useful website, full of advice for smaller businesses. It is well worth a good look at next time you are 'resting'. From their home page navigate to *Home > Finance and grants > Financial planning > Invoicing and*

*Payment Terms* where you can find some pages giving really clear advice about what you need to - and what you might like to - put in an invoice.

You should ideally put terms on your invoice, however the contents are a personal decision. You could consider including the following;

1. How long they have to pay. Commonly used invoice payment terms and their meanings can be found in the above link on the Business Link website.
2. How payment is to be made e.g. cash, cheque, bank transfer. Give all the information they need. If you want your invoice to be paid by bank transfer, give the details needed, for example; Name of the Bank, Name on the Account, Sort Code and Account Number.
3. Anything else you think is relevant to give you the best chance of getting paid on time, every time.
4. And a fourth point for the terms I'd put on an invoice; *"We reserve the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002."*[1]

Send off your invoice as soon as you are able to as it won't be paid until it is received. You could post it, fax it, email it, it doesn't matter as long as it is received. My preference is to save the invoice as a PDF (its harder to modify) and email it, asking for the Client to confirm receipt by return (some email programmes let you set this in your preferences, so at the very least you will have an automated acknowledgement).

1

http://www.compactlaw.co.uk/free_legal_articles/late_payment_commercial_debts_act_1998.html

## UK Legislation on Late Payments

The UK was the first to implement the European Directive on late payments.

The **Late Payment of Commercial Debts (Interest) Act 1998** [1998 Chapter 20] (The Act) applies to England & Wales, Northern Ireland and Scotland and made provisions for statutory interest to be charged on overdue payments. The current rate is set out by **The Late Payment of Commercial Debts (Rate of Interest) (No. 3) Order 2002** [Statutory Instrument 2002 No. 1675] for England & Wales and Northern Ireland, and by **The Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002** [Scottish Statutory Instrument 2002 No. 336] for Scotland.
The Act did not initially allow for a late payment charge to be made, however **The Late Payment of Commercial Debts Regulations 2002** [Statutory Instrument 2002 No.1674] (SI) for England & Wales and Northern Ireland, and by **The Late Payment of Commercial Debts (Scotland) Regulations 2002** [Scottish Statutory Instrument 2002 No. 335] (SSI) for Scotland, amended the original Act to allow this.

Legislation as originally published can be found on http://www.opsi.gov.uk and current legislation as amended can be found on http://www.statutelaw.gov.uk.

## Overview of UK Statutory Terms

The legislation that covers late payments is the **Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002** (The Act as amended).

It sets out minimum terms of payment and what penalties can be imposed if payment becomes overdue. "From 1st November 2002, all businesses, including public sector organisations, have been entitled to claim interest from any other business or organisation, including small businesses." "The legal status of the small business is irrelevant, and so includes sole proprietors, partnerships, limited companies and limited liability companies etc."[2]

Broadly speaking the Client has 30 days from the date of the invoice to pay (NET 30), however there are some exceptions. The Act isn't a particularly difficult read and for the sake of brevity I won't start repeating it.

The day after a debt is due, Section 5A.2 of The Act as amended allows for the following charge to be made,
"(a) for a debt less than £1,000, the sum of £40;
(b) for a debt of £1,000 or more, but less than £10,000, the sum of £70;
(c) for a debt of £10,000 or more, the sum of £100."

Also from the day after the debt is due, Section 6.1 of The Act as amended allows for interest to be charged at the rate set in The Order.
"The rate of interest ... shall be 8 per cent per annum over the [Bank Of England Base Rate] in force on the 30th June (in respect of interest which starts to run between 1st July and 31st December) or the 31st December (in respect of interest which starts to run between 1st January and 30th June) immediately before the day on which statutory interest starts to run."

VAT, if applicable, would be charged on the initial amount, but not the interest or the late payment fee. Late payment legislation guidance can be downloaded from the Department for Business, Innovation & Skills website http://www.berr.gov.uk/files/file37581.pdf

2 http://www.compactlaw.co.uk/free_legal_articles/late_payment_commercial_debts_act_1998.html

## Contractual Terms Vs Statutory Terms

The advantage of statutory terms is that as they are set in law so you have a good defence when a Client refuses to be bound by them. Hopefully this would make things easier should you ever need to pursue a debt as the Client should have a harder time arguing that terms of the contract were unfair – transactions between businesses are covered by the Unfair Contract Terms Act 1977 (UCTA). It is a personal decision wither you use statutory terms or set your own terms.

## Manage Payments

To manage payments you need to know when they are due by. If you use accounting software it might show you; or if you record your invoices in a spread sheet, maybe you could add an extra column to show the due date (date of invoice + days to pay - one); or maybe you just put a note in your diary. However you do it, it needs to be appropriate for the number of invoices you generate, so that you can easily see when payments are due by and if they have been paid.

Sometimes phoning the Client a few days before an invoice is overdue can be enough to prompt payment if it is a genuine oversight.

## Late Payments

The number of days a client has to pay is how long they have to get funds to you. It is not how long they have before they think about maybe paying you. However, before you go in all guns blazing, think about the relationship you have with the Client, as your actions may affect future work with them. Their actions may affect whether you want to work for them again or not, too! Including terms on an invoice does not necessarily mean you have to enforce them.

Andrews & Arnold Ltd, an Internet Service Provider, put together a website http://paylate.co.uk/ which has some tips and common excuses used by customers. You might find it offers some help, advice and counter arguments if a Client is presenting excuses, but not the money owed.

You could consider the following action if payment is outstanding;

- As soon as you can after payment is late, contact the Client. Phone and discuss things, be clear about what has happened – payment is overdue – and what could happen – enforcement of the terms. Regardless of what they say, put the same information in writing, enclosing a copy of the original invoice.

- Given payment is overdue, a week seems reasonable to have resolved the matter. If the debt is still outstanding phone again, be clear – payment is still overdue – and what will happen - enforcement of the terms. Again, regardless of what they say, put the same information in writing, clearly setting out the charges and/or interest that are being charged and the date they are being charged from.

- If after a further week the debt is still outstanding you should probably think about professional advice. If you are a member of a union they may have a team who can help you. Equity members should contact Equity for help & advice and Equity may decide to take the matter up on your behalf. If you are not a member of a union you could pay a Solicitor or maybe try the Citizens Advice Bureau for advice.

- Once you have had advice it might be appropriate to send a third letter setting out, for example, that you have applied a late payment fee, are charging interest at the following rate and that you intend to do the following if the debt is not immediately settled. Don't forget to enclose a copy of the original invoice. If you haven't already I would start sending letters by recorded delivery, even if you are emailing them too – just remember to get a copy of the signature from the Royal Mail, you don't know how long this could go on for or how far it will go. It might also be wise to keep all communication written from now on.

- I would take advice, but it probably would be wise to write monthly updating the balance of outstanding charges and enclosing a copy of the original invoice.

You could also consider going through HM Courts Service (www.hmcourts-service.gov.uk/infoabout/claims) where you can submit an online claim for debts for debts of up to £99,999.99, if there are no more than 2 defendants, both you and the defendant have an address in England or Wales, where documents can be delivered and you have a credit card to pay the admin fee with. However, I would suggest you do some research and take advice before you go down that route. It will cost you in terms of time and effort, but compared to the expense of a solicitor, it is much cheaper.

## And Finally

We hope you never need to use the latter part of this fact sheet, but that if you do, you will have an overview of what you could do. As for the first part, I hope it helps you put together good invoices.