

Issue 2 | Spring 2020

# escalate.news

News and views from Escalate, the multi-award winning dispute resolution and bad debt recovery process

## Looking for investment?

Why minimising your debtor books can secure more funding



### In this issue

Introducing Escalate's new debt recovery service

Our guide to avoiding commercial disputes

A recent case study - but with a twist



# Welcome

## A new approach for a new decade: Stop writing off disputes and debts, and start focusing on cash recovery.

The statistics are alarming. It's estimated by the Legal Services Board that in excess of £40 billion is written off each year by SMEs, because they don't believe that there's a cost-effective solution to resolving their disputes. And a recent Xero report estimates that there was £131 billion tied up in late payments last year.

Why is this happening? The message we hear from SMEs is clear: both the cost and the support system for recovery has been a major barrier. It's too easy for defendants to 'game' the system and less hassle for creditors to write off than pursue. This is exactly why we created Escalate - a positive and commercially viable alternative to writing off late payments, bad debts and other commercial disputes.

Escalate has three different strands, which means that we are able to help you get access to justice regardless of the challenges that you face:

**Escalate Debt Recovery** targets late payments and bad debts of £1,000+ that may previously have been written off.

**Escalate Commercial Disputes** helps with the inevitable trading bumps in the road that all successful businesses experience.

**Escalate Insolvency** works with Insolvency Professionals to maximise the return to creditors by guaranteeing 70% of the damages recovered.

Escalate and its partner firms are committed to helping change the late payment, commercial dispute and bad debt landscape for SMEs. It's time for you to get the full benefit of our commitment. It's time for you to Escalate...

*Chris*

Chris Clay, Managing Partner

## Latest Escalate news



### Winners at the Modern Law Awards

Escalate won the 'Innovation of the Year' award at the recent **Modern Law Awards**, and were also highly commended in the 'Business Growth Award' category. To top it off, we've also been shortlisted for the 'Award for Legal Services Innovation' at the upcoming **LexisNexis Awards 2020**. A great start to the year!

### Supporting the marketing sector

Escalate was proud to be an exhibitor at **Pimento's** recent annual conference. Pimento is a virtual marketing agency network comprising around 200 agencies and consultants. We've found that the marketing sector is particularly vulnerable to bad debts and commercial disputes - something that we're working with Pimento to try to address.

### More Chamber of Commerce events

Escalate partners **Price Bailey** and **ArchOver** recently held two well-received seminars on the topic of cashflow, in conjunction with the **Hertfordshire** and **Norfolk Chambers of Commerce**. Look out on our social media channels for more events in 2020.

### Welcome to Stephens Scown

Law firm **Stephens Scown** has become Escalate's latest partner firm. With 270 staff and 50 partners across three offices in Exeter, Truro and St Austell, Stephens Scown further strengthens Escalate's presence in the South West, where Bishop Fleming, Kitsons and PKF Francis Clark have already been working together as part of our 'Escalate community' and making a significant impact in the region.

### Our guest spot on latest Inside Accountancy podcast

Managing Director Chris Clay has been featured on Episode 9 of **Accountancy Age's** 'Inside Accountancy' podcast. Entitled 'Bad debt vs disputed debt and the opportunity for accountants', the podcast is available to download from the Accountancy Age website, or stream through Blubrry, Spotify, Apple and Google podcast services.



### Meet our fast-growing team - Escalate is hiring

The Escalate team has grown again, as we continue to gain new clients and establish ourselves as the number one commercial dispute resolution brand in the market.

We're now 10-strong, having recently welcomed John Colvin, Lynn Meadows, Emma McNamara and Carmen MacKenzie to the business. And we're not stopping there - we're now looking for Escalate Regional Development Managers in the South East, South West, Midlands, East Anglia and the North of England to support our Escalate partner firms and ensure that we work as closely as possible with our local SME communities.

**If you know of someone who might be suitable, please ask them to get in touch.**

### Escalate launches first app

Our Escalate Xero App is now live as part of our new Escalate Debt Recovery Service. Thanks to its seamless integration, the app allows you to automatically register bad debts with Escalate via the Xero accountancy platform. Access the app from [escalatedisputes.co.uk/XeroApp](https://escalatedisputes.co.uk/XeroApp) (it will also be available soon via the Xero App Marketplace).

## Announcing... Escalate Debt Recovery

Bad debts and late payments are an unwelcome but inevitable part of life for most businesses. However, trying to reclaim an unpaid debt has traditionally been challenging so most businesses end up reluctantly writing off the money they are owed. That is why we created **Escalate Debt Recovery**.



late payments and debts of £1,000 or more. We remove the hassle from recovering bad debts for our clients, with a simple sign-up process, seamless integration with the Xero financial system, no up-front costs and a fee only payable if we get you your money back.

We target a rapid settlement by employing a team of experienced dealmakers to negotiate on your behalf. And unlike traditional debt recovery solutions, we are also fully funded to take your case all the way to the High Court if necessary, with any potential adverse costs covered too.

This not only enables us to employ a broader range of negotiating strategies but also considerably strengthens our bargaining position to maximise the likelihood of getting your money back.

It costs clients nothing to explore and use the service, and we are confident it will make a genuine cash flow difference to SMEs.



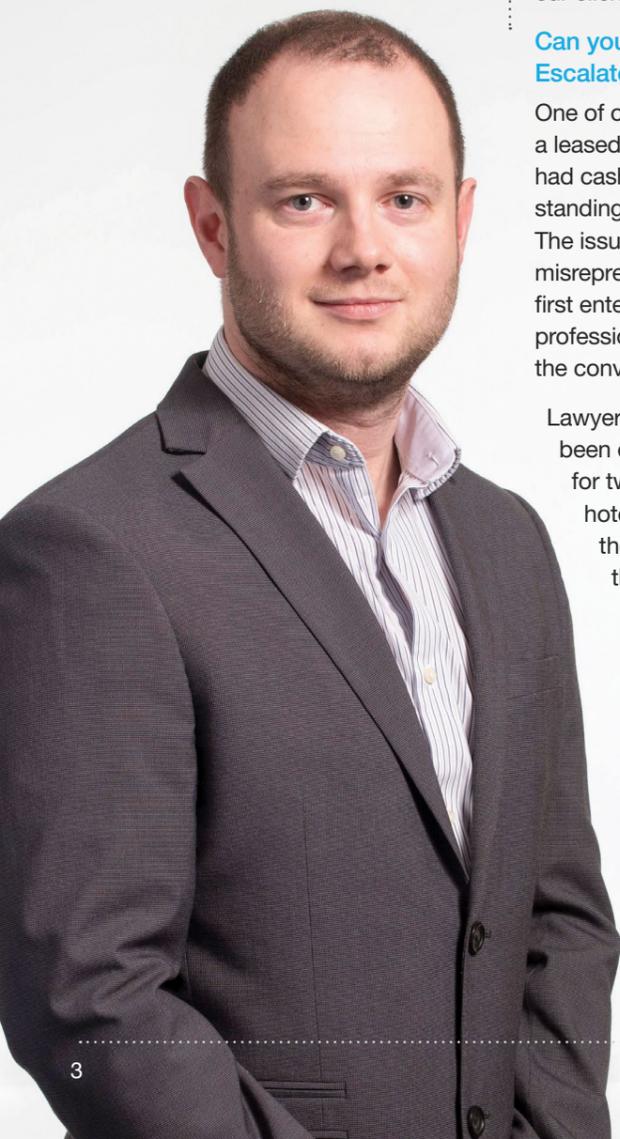
## “It’s about fostering a more joined-up approach”

Q&A with Luke Venner of Bishop Fleming



Bishop Fleming recently celebrated its centenary year and is one of the Top 30 chartered accountancy and advisory firms in the UK. The firm first started working with Escalate a year ago.

Senior Restructuring Manager, Luke Venner, spoke to us recently about how Escalate is helping Bishop Fleming’s clients and the benefits of collaborating with other Escalate partner firms.



**You’ve worked closely with our other Escalate partner firms in the South West: Kitsons and PKF Francis Clark. How have you found that?**

We know both firms well, so our good relationships have helped us work collaboratively. It’s about fostering a more joined-up approach to supporting SMEs in our region - we’re sharing ideas and experience with each other, as well as referring Escalate cases where we feel that a client would benefit from the experience of one of the other partner firms. This gives us confidence about the future of Escalate and the service that we can deliver to our clients.

**Can you tell us about any recent Escalate cases?**

One of our on-going cases involves a leased hotel business which has had cash-flow problems and a long-standing battle with the landlady. The issues centred around alleged misrepresentations when the lease was first entered into, and accusations of professional negligence on the part of the conveyancing lawyers.

Lawyers from both sides had already been embroiled in lengthy dialogue for two years, but to no avail. The hotel had exhausted its funds and the directors were consigned to throwing in the towel, closing the business and running the risk of personal bankruptcy.

My remit was to provide insolvency advice, but I didn’t want the directors to make a hasty decision on the company’s future until I’d had a chance to properly review the lease documentation, conveyancing papers and the lawyers’ documentation. It then

became abundantly clear that the issue was not one of causation or merit, but of funding - this is where Escalate came to the fore.

Whilst we have yet to encourage the landlady and her new advisers (the original lawyers resigned on conflict grounds, and other firms have since come and gone!) to discuss settlement, Counsel have now drafted the Particulars of Claim (for around £600,000) and we expect to serve shortly. We all remain optimistic about our chances of recovery and, importantly, the business continues to stand on its own two feet with our support and guidance.

**What’s the plan for the next few months?**

We’re looking at Escalate as a big value add for our clients, and the new Escalate Debt Recovery service will be one of the main selling points.

Our clients see bad debt issues every day - once they’ve witnessed the Escalate process for themselves it’s a no-brainer to engage with us.

**So you think a lot of clients still aren’t addressing their bad debts?**

We know first-hand that clients are writing off debts regularly, especially the smaller ones, which is supported by Xero’s estimate that a staggering £131billion was tied up in late payments in 2019.

As a team, one of our main focuses going forward is on forging relationships with our own clients and supporting them when clients and/or suppliers of their own run into difficulty, and we are confident that the Escalate Debt Recovery service will really help us to achieve this.

## Looking for investment?

Outstanding debts on an SME’s balance sheet not only restrict the company’s cashflow but can also significantly reduce the amount of money that it can borrow. So what can business leaders do? Ian Anderson, Chief Operating Officer of peer-to-peer lender ArchOver, looks at the options.

With a new decade upon us, small business owners nation-wide are looking ahead. Once they’ve cut through the fog of festive excess and likely scribbled resolutions to drink less and read more, they’ll reflect on what they need to do this year to prosper professionally. Some will contemplate hiring new staff, others will plan digital marketing campaigns, and many will reach the conclusion that sourcing funding is necessary to fuel these ambitions.

Chances are that those who seek funding will look first to their debtor books - the money owed to them by their customers - to unlock this funding. Indeed, we live in what the British Business Bank described in its Small Business Finance Markets 2018/19 report as “the world’s largest invoice finance market”, with “invoice finance... still the most commonly used product” amongst SMEs.

Lenders have looked to trade debtors as a key source of security for generations - and for good reason. Aside from cash, the debtor book is almost always the most liquid asset on the balance sheet. In an event of default, it provides a lender with a relatively straightforward route to recouping its capital.

Whilst we at ArchOver are not a traditional invoice finance provider, we too look at the debtor books of prospective borrowers as a source of lending security and analyse potential recoverability rates. But they can tell us much more than this.

Unlike Port and Christmas pudding, debt does not age well and if clients aren’t paying to terms we must ask “why?” The answers can be illuminating.

**Could it be bad management?**

ArchOver looks at a wide range of metrics when analysing lending propositions, but the bottom line is that we must ‘buy’ a business’s management to lend. We take a dim view of management teams that let debtor collections slip; this often indicates to us that other parts of the business will be similarly poorly managed.

**Is it that the goods or services being provided are poor or defective?**

This is an obvious red-flag to any lender, again prompting concerns about management and its control of the business as well as the collectability of the security.

**Is it late payment?**

This is viewed differently. Late payment is a deep-seated problem that plagues SMEs through no direct fault of management. In fact, it has been described by the National Chairman of the Federation of Small Businesses as their “biggest challenge.” The root cause is often a power imbalance between SMEs and their larger clients and it is enough of an issue to have attracted government attention.

This overdue debt represents a drag on liquidity and pursuing it a huge time cost, detracting from the time available to simply manage the business.

Late payment causes problems for lenders too, affecting borrowers’ cash flow and ability to make their scheduled payments. A willingness to engage with services like Escalate shows that a management team is pro-active in identifying problems and recognises the cost and distraction of chasing debts in house. As a lender, that’s the kind of clear headedness we like to see.

**For more information on preparing your balance sheet for lending, please contact Ian Anderson or Tom Mitchell at ArchOver on [ian.anderson@archover.com](mailto:ian.anderson@archover.com) or [thomas.mitchell@archover.com](mailto:thomas.mitchell@archover.com).**



## Dealing with bumps in the road

All businesses will at some point experience issues with suppliers, bad debts or stand-offs with other important stakeholders. These inevitable ‘bumps in the road’ can often turn into full blown commercial disputes, which collectively cost UK companies billions of pounds each year. So, what should you do if your business is heading towards a showdown? **Chris Clay, Managing Partner of Escalate**, looks at how to avoid the pitfalls.

### Should you pursue a dispute?

Commercial disputes, late payments and bad debts are a significant issue for UK businesses. Research from the Legal Services Board suggests that UK businesses are losing £40 billion each year due to commercial disputes and bad debt. If we look at the wider impact of late payments on UK SMEs, then this figure becomes even greater, with Xero recently stating that there is £131 billion tied up in late payments.

The problem is exacerbated by the fact that only one in ten businesses think there’s an effective way of resolving issues like this. This is because pursuing a commercial dispute has tended to be a costly, lengthy and risky undertaking for most British businesses.

It’s not hard to see why. Your lawyers will typically bill you based on the amount of time they spend working for you. Given that the average litigation case is around 18 months, it’s not uncommon for these bills to spiral to the level of the damages that you’re claiming.

Even if you can find a lawyer to act for you on a fixed, capped or ‘no win no fee’ basis, you’ll still have to pay up front for disbursements such as court fees, barristers and expert witness fees within a climate where court fees have increased exponentially and recovery of costs for the winning party has reduced drastically.

Add to that the risk that you could be liable for at least some of the defendant’s costs as well as your own if you lose the case.

On top of that, the typical SME doesn’t have the managerial capacity to stay on top of the paperwork and processes associated with a dispute as well as remaining focused on the day-to-day running of the business.

It’s hardly surprising, then, that many companies decide against pursuing a claim and reluctantly write-off what they’re owed.

There’s little doubt that the current system is stacked against SMEs and we think it’s time for change. That’s why we created Escalate.

### How can you avoid the pitfalls?

So what can businesses do to minimise the risk of getting involved in a dispute? And how should they manage any disagreements that do arise?

#### 1. Agree expectations from the start

Many disputes arise from the fact the parties didn’t take time to discuss their expectations at the start of the process. Invest time up front in clearly defining your objectives, responsibilities, standards etc to prevent a lack of understanding from becoming an issue later on.

#### 2. Document as much as possible

Having a paper trail of important decisions can act as a reminder of the agreements that have been made, providing evidence that can help to bring both sides back on track. Comprehensive paperwork is also likely to help your case, should the issue ever make it to court.

#### 3. Address issues early

The old adage that ‘a stitch in time saves nine’ applies here. A potentially tricky conversation early on can prevent a problem from growing in a complex legal case that will cost everyone involved considerable time and money.

#### 4. Be firm but fair

Your business is important to you, so nobody expects you to give in at the first sign of a disagreement. But don’t let your emotions cloud your judgement. Step back from the situation and ask an impartial observer for their views.

#### 5. Get an expert involved

If you feel that the other party is unlikely to change its mind, it may be time to seek expert advice. At this point, you should consider getting in touch with Escalate.

Escalate has been designed to help with all kinds of commercial disputes and bad debts - from straightforward late payments of £1,000 all the way through to complex multi-million pound cases.

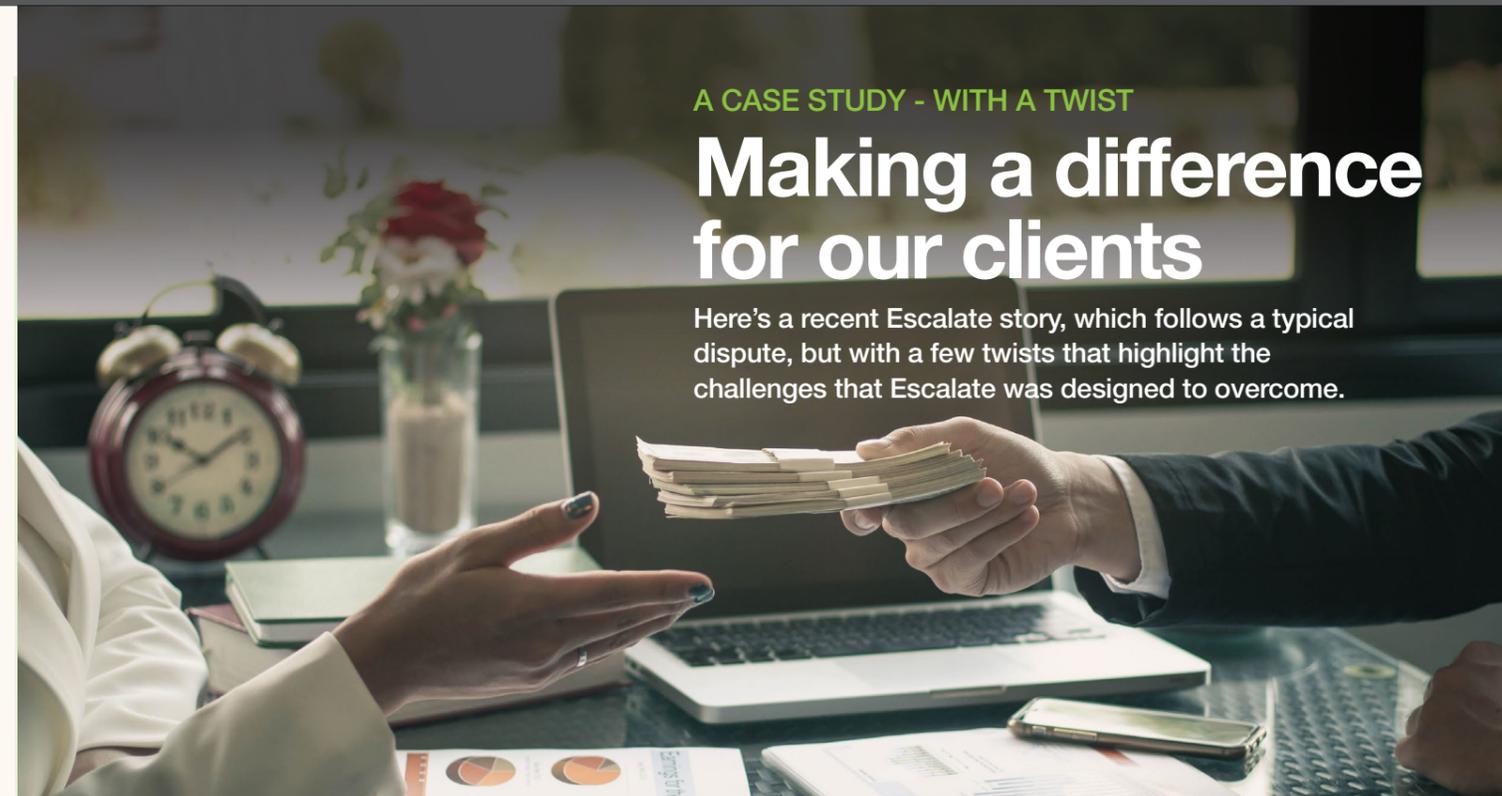
Escalate is already managing a wide variety of commercial disputes and helping to unlock over £80 million in cash for businesses. Could you boost your cashflow by using Escalate?

**If you have a commercial dispute or bad debt that you want us to resolve using Escalate, please get in touch with one of our partner firms. Contact details are provided on the back page.**

### A CASE STUDY - WITH A TWIST

## Making a difference for our clients

Here’s a recent Escalate story, which follows a typical dispute, but with a few twists that highlight the challenges that Escalate was designed to overcome.



We took on a case recently to represent an individual who had a contractual dispute worth £350,000 with a former business partner. There was clear bad behaviour from the other side and the merits in the case were strong. Our client had already tried to resolve the case himself (together with some ad-hoc legal advice) but didn’t get anywhere, and the longer the case dragged on, the more the defendant and his lawyers felt they could keep playing the game until our client gave up.

“ The defendant’s lawyers clearly thought that we were bluffing ”

#### Escalate gets involved

We followed our usual processes and gave the defendant’s legal team very clear messages about how we operate - stressing that Escalate is a packaged solution including funding and adverse cost protection, so the client now has all the means needed to take the case all the way to resolution. The defendant’s lawyers clearly thought that we were bluffing, and seemed uninterested in working out an early settlement to bring the case to conclusion. Proceedings were issued and the other side’s legal team did all they could to

frustrate and delay the system. After this failed, mediation started shortly after (albeit only after a lot of wasted time and costs from both parties). We were looking to get around £300,000 on the day because our client needed closure at this point.

#### The first offer

The defendant’s offer was a low five-figure sum, alongside a message of “the contracts are weak, you know it, we know it. Your funders and adverse costs protectors are not going to continue to support your case as it moves closer to court, so take the money before they bail out on you and you get nothing”.

We of course rejected the offer and repeated - again - that costs were not an issue if the case went to court, Escalate was the ‘funding and adverse cost protector’, and we had no intention of bailing on the case.

#### The second offer

The second offer was for a six-figure sum, but this time the defendant had offered to pay ‘all costs in full’ with just a small five-figure element attached for damages. Having failed in their attempt to scare our client into accepting a low

ball offer for fear of the funder/adverse cost protector stepping away, this time they went in the other direction and tried to buy off the funder/adverse cost protector by paying us in full in the hope we would then force the client to make a settlement at the level offered. Again, the offer was rejected.

“ If we had known about Escalate before today’s mediation, then we would have looked to have settled this earlier ”

#### The penny drops

Eventually, the penny dropped and we settled on the day at the level we set out to achieve. Our client was extremely grateful, and the Escalate model had once again demonstrated its power. Indeed, the defendant’s lawyers admitted afterwards that: ‘if we had known about Escalate before today’s mediation, then we would have looked to have settled this earlier’.

**If you have a commercial dispute or bad debt that you want us to resolve using Escalate, please get in touch with one of our partner firms. Contact details are provided on the back page.**

Contact us to start resolving your commercial disputes and bad debts. To find out more about how Escalate can help your business, contact one of our partner firms, or the Escalate team directly:



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