

Issue 1 | Summer 2019

# escalate<sup>↑</sup>news

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

## Standing up for SMEs

How Escalate is providing access to justice for thousands of SMEs.

### In this issue

A new approach  
to collaboration

Supporting the  
automotive sector

Construction  
retentions - it's time  
for change



## What is Escalate?

Escalate is an innovative multi-award winning process that is helping SMEs to resolve commercial disputes and bad debt. Over £40 billion is written off by SMEs each year, as they do not believe that there is a cost effective solution to resolving these issues. We are putting that right.

The Escalate process is transforming the market by saving you money, time and hassle, and enabling you to get on with running your business.

- No financial risk - you do not pay unless we recover your money
- Fixed fee on success - we give you complete pricing transparency from the start
- No upfront costs - all legal fees, expert witness fees etc are covered
- Fast turnaround - we target a result in less than half the time of a traditional case

If your business is involved in a commercial dispute or you are unable to recover bad debts, please contact us or one of our other partner firms to find out how we can help.

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## Welcome to the very first edition of the Escalate News - a round-up of our latest news, views and advice from the Escalate team.

We created Escalate because we want to help SMEs resolve their commercial disputes and bad debts. Traditionally, businesses wanting to pursue a claim were faced with high upfront costs, considerable financial risks and a time consuming process - hardly surprising, then, that many of them reluctantly decided to write off what they were owed. We wanted to put that right and restore 'access to justice' for claimants. The result is Escalate.

Escalate News is designed to keep you up to date with all of the latest developments at Escalate - and there's considerable progress to report.

We've built a national network of leading professional services advisers and champions, including respected organisations such as Armstrong Watson, Bermans, Bishop Fleming, Capitalise, Dains, Decipher, PKF Francis Clark, The Institution of Lighting Professionals, Kitsons, Memnet, Menzies, Moore Blatch, My Debt Recovery, PKF Littlejohn and Price Bailey (see the back cover for a complete list). And we're regularly adding to that number, as explained elsewhere in this edition.

We've reviewed over 300 potential cases and are currently helping businesses to

unlock over £50 million in cash that's tied up in commercial disputes and bad debt.

We've won four major national awards - an unprecedented 'grand slam' from our peers in the accountancy and legal sectors that recognises the innovative and collaborative nature of our service: 'Innovation of the Year' at the British Accountancy Awards, 'Best Collaboration Initiative' at the Lawyer Awards, 'Excellence in Business Development' at the Law Society Excellence Awards, and 'Legal Services Innovation Award' at The British Legal Awards.

We could continue but will conclude simply by saying that our goal is to become the number one SME dispute resolution provider in the market - and we believe that we're well on track to achieve that.

We hope that you enjoy this first edition of Escalate News and that it gives you a good idea of some of our current activities. If you have questions or comments about any of the subjects we cover, please don't hesitate to get in touch with us or one of our partner firms.

*Chris, Mark, Nick*

Chris Clay, Mark Osgood & Nick Harvey  
Escalate Founders

# Latest Escalate news



## Three more partners join Escalate

Three leading regional professional services businesses have joined the Escalate network in the past few months, adding to our already extensive list of partner firms: **UHY Hacker Young's** Manchester office, **Ashtons Legal** and **Pimento**.

Manchester is one of accountancy firm UHY Hacker Young's most important offices, with a team of 80 partners and staff working with local, national and international clients.

Ashtons Legal is an award-winning legal practice with offices throughout East Anglia and strong links within the regional business community.

Pimento is an independent network comprised of over 200 consultants and agencies in the advertising, marketing and creative industry - a sector that we know from past experience is particularly susceptible to disputes and late payments.

**"The traditional dispute resolution model has been heavily stacked against SMEs for a long time, with businesses being forced to write off more than £40 billion each year. We're keen to be part of the solution."**

**David Kendrick, Partner at UHY Hacker Young in Manchester**



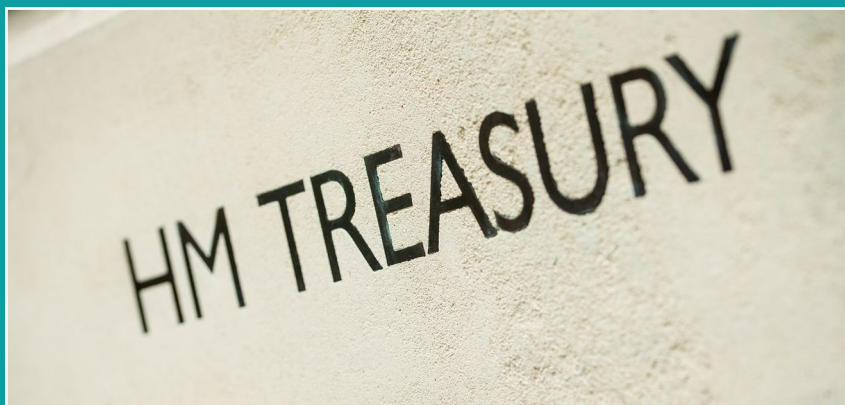
## Welcome to our newest recruits

Karina Rafalska and Richard Moose have joined Escalate as Associate and Senior Associate respectively. The arrival of Karina and Richard reflects Escalate's momentum, as well as our confidence and ambition for the future: with over 300 cases now assessed, we have expanded our core team to make sure that we maintain our strong client focus.



## On board with the Chambers of Commerce

Escalate has recently agreed a partnership with the **Norfolk Chamber of Commerce** to extend our dispute resolution services to the Chamber's members, in conjunction with Price Bailey and Ashtons Legal. We expect considerable interest in this initiative from the Norfolk business community, and are already in talks with other forward-thinking Chambers to roll out this model nationally.



## Supporting the Government's late payment initiative

Escalate recently met with Martin Traynor OBE, the SME Crown Representative, and the SME Crown Representative's head of office, Stephen Tokley, to discuss the issue of late payments and opportunities for improving SME's access to justice. We recognise the positive action being taken by government to provide better protection for SMEs and improve supply chain behaviour. There are a number of useful resources to help businesses understand the protections in place for their cash flow management when engaging in a government supply chain contract or thinking of participating in one. Contact any Escalate partner firm for more information.





# Construction retentions – it's time for change



The construction retention is open to abuse, and contractors are potentially missing out on millions of pounds of unpaid invoices. Bill Bordill, a director at Escalate partner firm Decipher, explains why.





**The mood at the Mipim conference, the global property industry's annual networking event in Cannes, earlier this year was more subdued than usual. Delegates were well aware that predictions for the UK commercial and residential property market look weak at best. Indeed, a recent survey of the housing market by the Royal Institute of Chartered Surveyors concluded that prolonged Brexit uncertainty will likely cause further damage to the sector. The outlook is gloomy, even when viewed from the south of France.**

As a result of lacklustre demand, it is reasonable to assume that residential developers might need to shave their prices to encourage sales - but they will be less keen to cut their margins. Similarly, commercial developers, especially local authorities, are under huge financial pressure currently and will be looking to cut expenditure. One obvious way to save money is not to pay a construction retention.

### What are construction retentions?

The retention system has been a feature of the construction sector for decades, with the aim of providing clients with security against defective work or the insolvency of their construction contractors. A retention occurs when the client holds back a percentage of the payment for a construction contract. The first half of the retention is then typically released when the project completes, with the remainder following once the defects liability period on the project expires.

A recent government report found that the average construction retention was 4.8%. As this is a significant sum, the attraction of not paying it is plainly quite high. Historically, many within the property industry have accepted non-payment of the retention as 'just something that happens'. The question, given the challenges affecting the sector, is whether this mantra will be adopted by more organisations in the supply chain.

The issue is further compounded by the collapse of Carillion last year.

While there have always been grumblings, it was not until early in 2018 that chartered surveyor and MP Peter Aldous used the Ten Minute Rule to introduce the Construction Retention Deposit Scheme Bill 2017-2019 to Parliament.

Aldous's intervention was the first time the issue had received serious debate for many years and, regardless of the outcome, has left many contractors who are subject to the retention asking whether non or late payment is acceptable going forward.

### How can you make sure your retention is paid?

One of the most common solutions is ensuring that the monies due in a retention are held in a separate account or

even a retention bond. This is standard practice and indeed a regulatory requirement for many professions, including legal and financial services.

Physiologically, having money in a separate account works well as it is less likely to be seen by the company holding it as something that is available for working capital or even to pay bonuses. Having the monies held in a legally separate account also means that they cannot be touched should the client have financial difficulties as a result of not getting paid further up in the supply chain or even in the worst case, insolvency.

Practically, setting up a bond or separate account is simple and the mechanism for paying out can be covered in the standard contracts that you use. As this type of arrangement is established at the inception of the work, it overcomes or highlights the exposure to the company not paying.



If the client intends to pay the retention, subject to reasonable terms and conditions, then it should not have an issue with placing the money in a bond; if, on the other hand, it strongly objects, then alarm bells should ring and allow you to decide whether the payment of a retention would dictate whether you want to accept the contract.

Having better contracts is the other solution. In our experience, too many contractors simply accept the terms and conditions of the contract that they are given. Most of the contracts that we see are vague in terms of when a retention will be paid. Others fail to be explicit on what constitutes a defect. In short, most contracts are sufficiently ambiguous that a contractor needs to resort to legal action in order to clarify the situation.

Assuming you have unpaid retentions and have been unable to gain an acceptable resolution with the company that contracted you, then you will most likely need legal support. This is where Escalate can help.

### So, what should I do?

To avoid payment issues our recommendation is always to carefully check who you are dealing with and walk away if necessary, even though this can be a hard decision to make.

Remember the adage that prevention really is better than cure. The best solution to issues with retentions is to address them at inception of the negotiations. Get the contracts checked and insist on setting up a bond or separate bank account.

If you have already suffered losses then don't automatically assume the costs of recovery outweigh the benefits. For advice on recovering unpaid construction retentions, or for more information about the Escalate process, please contact us.

## Q&A WITH MATT HOWARD, PRICE BAILEY

# “We’re excited about the possibilities for the future”

Matt Howard is a partner at accountancy firm **Price Bailey** in Norwich. He has been working with Escalate for over two years, and now shares his inside knowledge on how the process is helping Price Bailey’s clients...

### Why did Price Bailey become an Escalate partner?

Primarily because we work hard to put our clients first. It was something that developed from the conversations we were having with our clients: many of the SMEs we work with kept telling us that they were being forced to write off bad debts and commercial disputes. The reasons for the write offs tended to be the same: lawyers are too expensive, the process takes too long, clients already have enough to do, and there’s too much risk. There wasn’t a clear solution to these problems – until Escalate came along. From that point, becoming an Escalate partner was a no-brainer – it was a ‘win’ for our clients, who now have a hassle-free and cashflow-friendly way to manage their debts and disputes, and a ‘win’ for us, as we’re now able to provide an even better service.

### What has been the reaction from clients?

The response has been very positive. Even the most successful businesses have the occasional bump in the road. They now know that they can come to us when they get to one of these obstacles, and we can very quickly assess the merits of their case. Clients particularly appreciate that Escalate

helps rather than hinders their cashflow – they don’t have to pay upfront, the fees are fixed, there are no costs to pay if the case doesn’t succeed. That makes a considerable difference to a business because cash is so important to their survival and growth.

### What Escalate cases are you working on at the moment?

We’ve got a number of interesting cases in the pipeline at present, so I can’t say too much about them. They cover a variety of different issues – bad debts, contractual disputes, negligence, infringement of intellectual property – and range from claims below £10,000 to those where several million pounds are at stake.

### How have you found working with the other Escalate partners?

We’ve developed a good relationship with the team from Ashtons Legal. Working together, we have a very strong on the ground presence in East Anglia and we’re already starting to make a difference for the region’s business community. We’re excited about the possibilities for the future.

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

Together with Ashtons Legal, we’ve recently launched major initiatives with Barclays and the Norfolk Chamber of Commerce. This means we can help even more SMEs in the region to get the access to justice that they deserve. We hope that the work we’re doing together in East Anglia will provide a template for other Escalate partners to follow elsewhere in the UK.

### What advice do you give to clients with a dispute or bad debt?

Don’t write off your disputes! Escalate is already helping businesses like yours unlock over £50 million in cash from their disputes. Get in touch with us or one of the other Escalate partners and let us see how best we can help you.







# A new approach to collaboration

## Creating communities for the benefit of clients

The emergence of a number of pioneering ‘Escalate communities’ is transforming how lawyers, accountants and other professional services advisers are supporting their clients with commercial disputes and bad debts. The evidence from different parts of the country suggests that clients are starting to see considerable benefits as advisors become empowered to draw on a broader pool of skills and experience in their local business communities.

This collaborative ethos is perhaps most visible in the South West, where Escalate accountancy firms **PKF Francis Clark** and **Bishop Fleming**, together with law firm **Kitsons**, have pioneered a more joined-up approach to supporting the region’s SMEs. The partners are already sharing their insight and expertise with each other, as well as referring Escalate cases where they feel that a client would

“ PKF Francis Clark, Bishop Fleming and Kitsons have complementary skills and experiences, so sharing ideas and best practice makes sense for us and for our clients. ”

**Andrew Pay, Partner and Head of Insolvency at Kitsons**

benefit from the experience of one of the other partner firms.

Elsewhere, **Price Bailey** and **Ashtons Legal** are working together to provide SMEs in East Anglia with greater access to justice. Through their mutual connections, they have welcomed the **Norfolk Chamber of Commerce** and **Barclays** into the region’s Escalate community, thereby providing many more local businesses with an opportunity to tackle their bad debts and commercial disputes.

With a critical mass of leading business advisers now on board nationally, the opportunities created by working collaboratively under the Escalate banner are expected to be considerable.

The experiences of the Escalate partner firms in the South West and East Anglia suggest that there is a better way for professional services businesses to help their clients. Over time, we look forward to seeing these initiatives develop into strategic plans in key regions across the country. This approach provides yet another example of Escalate partners living up to our values of innovation and collaboration – areas in which Escalate is already developing a strong reputation.

## Partnering with the lending community

Tidying up your balance sheet can help your business secure finance

Escalate is developing closer links with a number of lenders and fintech businesses to help their clients pro-actively manage their cashflow. Leading peer-to-peer lender **ArchOver**, funding platform **Capitalise**, and banking giant **Barclays** have all partnered with Escalate, with others expected to follow in the coming months.

“The phrase ‘cash is king’ has become something of a cliché in business circles, but that’s only because it’s true. Escalate is a multi-award-winning process that’s utilised by leading accountants and lawyers as a proven way of helping SMEs to improve their cashflow.”

**Paul Surtees, Founder of Capitalise**

Both lenders and borrowers have seen the wider benefits that Escalate can provide beyond a single dispute or late payment resolution. Escalate is now being used as a powerful tool for helping businesses clean up their balance sheets to become not just more resilient, but also financially stronger. This helps them to attract new and better-priced capital to fund their growth.

Crucially, Escalate is also now being seen as an important source of cash generation to support a business’s growth in partnership with lenders. Escalate’s ability to recover previously written off bad debt or historic disputes is providing liquidity in a way not previously considered or thought possible.

Focus on...

# Standing up for SMEs

**How Escalate is providing access to justice for thousands of SMEs.**

Late payments have recently been in the spotlight, with the Government announcing new measures to deal with the problem. Escalate has been focusing on this issue for a while now, as well as the resulting bad debt and commercial disputes that can follow.





*“ Good policy is essential but it also needs to be enforceable and provide a practical mechanism for entrepreneurs to recover the money they are owed.”*

**Simon Underwood, Partner at Menzies**

## Government unveils plans to tackle late payment

**Policies need a practical mechanism for recovering funds.**

The Department for Business, Energy and Industrial Strategy (BEIS) has announced new measures to tackle late payments. Key initiatives include:

- A consultation on strengthening the powers of the Small Business Commissioner, Paul Uppal, will be launched. This will consider imposing fines and binding payment plans in order to improve poor payment practices.
- Company boards will be held accountable for supply chain payment practices for the first time.
- A tough new approach will be applied to large companies that do not comply with the Payment Practices Reporting Duty, an existing mandatory requirement on businesses to report payment practice to a national database twice a year.
- A new Business Basics fund will be launched to encourage businesses to use technology to simplify invoicing, payment and credit management.
- Responsibility of the voluntary code of best practice, the Prompt Payment Code, will be moved to the Small Business Commissioner.

In our view, successfully tackling late payment requires a cultural shift by large businesses, and the Department for Business, Energy and Industrial Strategy's proposals have the potential to make a difference in this area. Strengthening the scope and power of the Small Business Commissioner and making company boards more accountable for the payment of suppliers will start to change attitudes at leadership level, and that will begin to drive better behaviour over time.

Although the announcement includes some sensible measures to target businesses that refuse to pay on time, they're unlikely to be enough by themselves. Ensuring that SMEs have quicker and more cost-effective access to the legal system will be vital if the proposals are to have real bite, and accountants and lawyers have an important role to play there.

Although the tide is starting to turn, we firmly believe that the current system is broken and stacked against SMEs. We will continue to support businesses to recover the money they are owed through bad debts and other commercial disputes.

## Escalate survey looks at the impact of bad payment practices

Escalate and its extensive network of partner firms has recently concluded a survey to gauge the impact of commercial disputes and late payments on SMEs across the UK. The volume of responses has been encouraging and our findings will be released over the summer. The issue of late payments has been building momentum in the national media, with the Government's proposed plans to improve the culture around payment practices, and the Federation of Small Business launching its 'Fair Pay Fair Play' campaign. FSB research revealed that 50,000 SMEs close each year because of delayed payments from their clients.

*“ Escalate already has a track record of making a difference - and we're only just getting started.”*

**Mike Kienlen, Chairman of Armstrong Watson**

Our mission is to give businesses better access to justice and help them recover the billions of pounds in late payments that are written off as bad debt each year. We are already making a difference; please get in touch if we can help your business.



# Supporting the automotive sector

What can your business do when supply chains come under pressure?

Midlands-based accountancy firm and Escalate partner Dains is reporting considerable interest in dispute resolution from businesses at all stages of the automotive industry in the region. This is largely the result of the sector's highly-publicised financial difficulties, which have caused cashflow problems and put pressure on supply chains and contracts.

Dain's expertise in the sector enables it to recognise the particular challenges facing the car industry at the moment: the fall in the popularity for diesel cars has resulted in costly factory configuration changes, growing demand for electric cars has generated new investment challenges, and a decline in car sales in China has hampered many of the more premium brands and their suppliers. Manufacturers must also contend with the uncertainty caused by the political stalemate surrounding Brexit, as well as significant development costs and the supply chain issues that characterise the industry. Our conversations with clients suggest that this combination of factors is creating a cashflow squeeze for downstream companies.

“ Many businesses are in need of a clever solution to help improve their cashflow. Our clients recognise the important role that Escalate can play in unlocking cash that's tied up in commercial disputes and bad debts.”

Richard McNeilly, Managing Partner of Dains

Escalate was developed to operate in circumstances just like those facing the automotive sector at present. Escalate prioritises cashflow by focussing on a quick settlement and removing financial risks and upfront costs. There are no restrictions on the types of cases we tackle – bad debt, contractual, negligence, IP infringement etc – and, importantly, we can revisit disputes that are up to three years old.

If your manufacturing business is involved in a commercial dispute or you are unable to recover bad debts, please contact Dains or one of our other partner firms to find out how we can help.



## CASE STUDY



## Making a difference for our clients

**A flooring company purchased products from a well-known supplier of cementitious materials. The product was defective, resulting in the customers' floors failing. The company was faced with client claims and wanted to recover the value of those claims from the supplier.**

The claimant did not have the resources to pursue a claim against a large multinational – and the defendant knew this. It attempted to delay the process and force the claimant to incur further costs so it dropped its action or settled for a lower amount. Under the traditional dispute resolution process, this delaying tactic is likely to have proven successful for the defendant.

“ The Escalate team really took this to them and did not waiver. Escalate is a truly game changing product and has enabled us as a mere minnow to swim with sharks and hold them to account. You have given us a chance to carve out a future that would have otherwise been very difficult and would have no doubt meant the end of our business. You have no idea what this means. I am eternally grateful. Escalate allowed me to sleep at night again.”

Dave, Client

Once engaged, proceedings were served by Escalate. The supplier kept delaying, but received a clear message: ‘the more you delay, the more it will cost you’. The claimant, meanwhile, had no financial risk as its costs had been agreed at the start and all of the necessary upfront fees had been covered.

The case won a substantial settlement after going to court.

## Future Initiatives

Look out for more information on these latest developments in a future edition of Escalate News



We have started the process of **creating an integrated app** for the Xero App Marketplace to identify debtors to ‘Escalate’ into new cases. It will be mobile ready and automated to ease identification, populating information directly from the Xero ledger. This will be the first in our wider roll out of technology solutions to help case support, and the Xero App Marketplace app is the start of our journey towards that. We view this development as a very important tool for helping drive better behaviour around late payments.



We have seen a rise in **law firms and Insolvency Practitioners** using Escalate, and expect this to become a growth area as we continue to roll out our offer to these communities over the coming months.

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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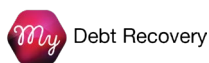
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