

1. Legal issues

Data Protection & Freedom of Information

Data Protection Act 1988 & 2003:

The Data Protection Acts, 1988 and 2003 are designed to protect the privacy of the individual by giving effect to Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Act regulates the collection, processing, keeping, use and disclosure of certain information relating to individuals that is processed automatically. With some exceptions, it covers all computerised data relating to individuals.

The Acts confer rights on individuals, as well as responsibilities on those persons processing personal data. In essence, the Data Protection Act 1988 gives individuals a right of access to personal data concerning them, where the information is held by agencies on automated systems.

All personal information relating to a living individual is included under the legislation. It covers data that is held on computers as well as data that is held in manual files. Additionally, it applies to all the data that is held - for example it applies to data in emails and copy letters as well as to data on Master Files.

Obligations of the Data Controller:

All data is required to be obtained and processed fairly, and should be accurate and up-to-date, held for lawful purposes and not disclosed in any manner incompatible with that purpose. The Act also requires that appropriate security measures are taken against the unauthorised access to, alteration, disclosure or destruction of the data and also against the accidental loss or destruction of data. In addition, the Act places an obligation upon the Data Controller to ensure that the data is adequate, relevant and not excessive, and is not retained for any longer than is necessary for its explicit purposes.

Rights of the Individual:

Where information is held pertaining to an individual, every individual is entitled to get a copy of the personal information (within 40 days of the request), and to have the data corrected or erased, where appropriate. Additionally, any person can prevent their personal information from being used for certain purposes, for example a person might want data blocked for research purposes, where it is held for other purposes. In addition, individuals have the right to have their name removed from any direct marketing list, and to stop some specific uses of personal information, as well as the right to prevent their phone directory details from being used for direct marketing purposes.

In relation to employment rights, a person cannot be compelled to disclose information to a prospective employer. Where vetting for employment purposes is necessary, this can be facilitated where the individual gives consent to the data controller to release personal data to a third party.

An individual also has the right to freedom from automated decision making, i.e. to have human input in the making of important decisions relating to them. Important decisions about an individual, for example, work performance, creditworthiness, reliability may not be made solely by automatic means e.g. by

computer, unless the individual consent to this. In general there has to be a human input in such decisions.

The Act also imposes certain obligations on the holders of personal data, including the obligation to register with the Data Protection Commissioner in relation to automated systems and manual data (by virtue of the Data Protection (Amendment) Act 2003). The Data Protection Commissioner can also investigate complaints made to him by individuals who feel that the Act has been contravened.

The Application Procedure:

An individual seeking access to personal data must send a written request to the relevant body/Government Department, specifying that the request is made under the Data Protection Acts, 1988 and 2003. To facilitate processing of the application, the individual making the request should where possible give any details which might be needed to help the relevant body/Government Department identify the applicant and locate the information which they may keep regarding about him/her. An individual may request personal data held under one or more registrations. There is an access fee of €6.35 *for* each registration in respect of which an access request is made.

Freedom of Information Act 1997:

The aim of this Act is to allow the public access to both personal and non-personal information held by government departments and public bodies and to enable people to have personal information held about them corrected (where appropriate). The Act came into operation incrementally, and in April 1998 the main tenets of the Act were implemented by government departments, local authorities, health boards and some other public bodies. All government departments and other public bodies were given one year from the date of

passing of the Act to get their record-keeping systems in order, to appoint Freedom of Information Officers, and to prepare information booklets on their internal structures and on the type of records they held. Local authorities and health boards were given 18 months to prepare, and since then other public and semi-state bodies have been brought within the Act on an on-going basis. To ensure the successful implementation of the Act, the government provided public servants with extensive training and non-governmental organisations and representative groups also provided training for potential users, journalists and the voluntary sector (the Act is particularly useful for journalists because the purpose of the Act is to ensure that all official information should be publicly available – for example the Sunday Tribune was able to use the Act to get information concerning a row between the Air Corps, the Gardai and senior civil servants that led to increased costs and delays in acquiring a second garda helicopter). The Government also established a central policy unit to monitor the implementation of the Act, to advise information providers and to produce guidelines on specific issues.

An intention to amend the original act was announced in February 2003 in order to ensure that sensitive records were not publicly available after 5 years. However a further amendment was also suggested in order to eliminate the large volume of requests from certain individuals and requests that the Government believed caused substantial and unreasonable interference. However, not all of these recommendations were implemented and in essence the main changes brought about by the Freedom of Information (Amendment) Act 2003 related to the protection of cabinet and governmental information that is part of an on-going process and therefore cannot be released. In addition the Act also imposed up-front charges for freedom of information requests, as follows:

Application Fees:

- ✓ Personal Information (only): There is no application fee if the request is for personal information only, as defined in the Acts.
- ✓ Non-personal Information: If the request is for a record containing non-personal information, an application fee of €15.00 applies or €10.00 if the applicant is a current medical card holder (evidenced by supporting documentation), if the request is for an internal review the fee is €75, and if the request is for a review by the Information Commissioner the fee is €150.

Search and Retrieval and Copying Fees:

Fees may also apply in respect of the time spent searching and retrieving records that are released to the applicant on foot of a request and in respect of the copying of any records released. Such fees are unlikely to arise if the request is for personal information only.

The rates of these fees are as follows:

- ✓ €20.95 per hour of search and retrieval
- ✓ €0.04 per sheet for a photocopy
- ✓ €0.51 for a three and a half inch computer diskette containing copy documents
- ✓ €10.16 for a CD-ROM containing copy documents
- ✓ €6.35 for a radiograph (X-ray) containing copy documents

Deposits:

A deposit is payable where the estimated cost of search and retrieval of records sought is estimated to exceed €50.79. In such a case, every effort must be made to assist the requester to amend the request so as to reduce or eliminate the amount of the deposit.

Reductions and Waivers:

A fee in respect of search and retrieval and copying of records will be waived where the cost of collecting and accounting for the fee would exceed the amount of the fee itself (a guideline of less than €10.00 is used in this respect);

A fee in respect of search and retrieval and copying of records or a deposit may be reduced or waived where the information in the record would be of particular assistance to the understanding of an issue of national importance.

Procedures:

Under the Act, requests for information must be made in writing and must specify the manner of the data required, i.e. disk or hard copy, transcript, or just a reasonable opportunity to inspect the information. Sufficient particulars must be given in order that the record can be identified. Reasons for requesting the information are not necessary and the public body is directed not to take account of them. Therefore it should have no effect on a decision to grant or refuse the information.

In the case of personal records, there is no time restriction and an individual is entitled to access records going back to the time that they began to be held. In the case of non-personal records, only those created after the enactment of the Act are included, except where access to earlier records is necessary in order to understand records created after the commencement.

The head of the recipient body has to acknowledge receipt of the request within two weeks and must decide on the request within 4 weeks of receiving it. This period may be extended if access to a large amount of data is requested. If the request is granted the head must notify the requester of this fact, and indicate

the person dealing with the request, as well as indicating the date and manner in which the information can be accessed, for how long, and the amount of fee if any to be charged.

If the request is refused or deferred, reasons must be provided as well as information regarding a right of review/appeal. The main reasons for a refusal are the protection of public interest and individual secrecy, that insufficient particulars were given to enable the material to be identified, or that the material was so voluminous as to cause substantial and unreasonable interference with or disruption of the other work of the public body concerned. Information may also be refused for administrative reasons, such as the record cannot be found or is going to be publicly available within 12 weeks. Within the context of an appeal the decision is firstly reviewed internally within 3 weeks of a refusal. If the internal review is also unsuccessful then an external Information Commissioner can further review the application. This review must be carried out within four months of a receipt of an application. Any person who hinders or obstructs the actions of the Information Commissioner can be fined a maximum of (€1,900) and/or receive a prison sentence of up to six months.

Decisions of the Information Commissioner can be appealed to the High Court, where there is controversy regarding a point of law, a further appeal to the Supreme Court is also under the FOI Amendment Act 2003.

Records:

In the case of personal records, there is no time restriction. An individual is entitled to access records going back as far as they were held. In the case of non-personal records, other those created after the Act are included, except where prescribed by the Minister, or where access to earlier records is necessary in order to understand records created after the commencement of the Act. Part 3 of the Act also provides a number of clearly defined exemptions, namely:

- Meetings of the Government (Section 19);
- Deliberations of public bodies (Section 20);
- Functions and negotiations of public bodies (Section 21);
- Parliamentary, Court and certain other matters (Section 22);
- Law enforcement and public safety (Section 23);
- Security, Defence and International Relations (Section 24);
- Information obtained in confidence (Section 26);
- Commercially sensitive information (Section 27);
- Personal Information (Section 28);
- Research and natural resources (Section 30);
- Financial and economic interests of the State and public bodies (Section 31);
- Enactments relating to the non-disclosure of records (Section 32)
- Records relating to the appointment, proposed appointment, business or proceedings of tribunals of inquiry and any other tribunals established by the Government, Ministers or the Houses of the Oireachtas (Section 22 (1)(A) FOI (Amendment) Act 2003).

Some of these exemptions are mandatory and others are discretionary. Mandatory exemptions apply to Sections 22, 26, 27, 28, 32, whereby the head of the public body must refuse access.

It is important to note that one of the primary weaknesses of the Act is that the police are not covered – although they may be included by Ministerial Regulation. In addition, the Courts and Tribunals of Inquiry are also excluded.

Impact of the Freedom of Information (FOI) upon the Media:

The FOI Act is an important tool for journalists. It was estimated by individual journalists that in the first year of the operation of the Act one in ten requests produced a story, 5-6 requests produced information, and the remaining 3 were either refused or heavily censored.

Corporate Insolvency

There are three main areas of insolvency you have to be aware of:

- Liquidation
- Receivership
- Examinership

We will deal with each in turn

Liquidation.

When a company is in liquidation they are in the process of being wound down. The liquidator's job is to wind up the company and distribute the available assets to the various classes of creditor. There are three forms of liquidators appointed; there is a member's voluntary liquidation, a creditors voluntary liquidation and a court appointed liquidation.

Members Voluntary Liquidation

A company can go into member's voluntary liquidation if the directors decide they simply want to wind up the business, sell off the assets and walk away. In this instance all creditors will be paid in full, there is no question of financial insolvency. If you see a notice that one of your customers is going down the route of member's voluntary liquidation you should contact them, make them aware of the outstanding amount and get a commitment in the normal way that the account will be paid. It is in your interest to do this as quickly as possible, if your claim is overlooked and the company is wound up, you will not be able to collect the money after the event. For further details on this [click here](#). The essential feature of a members' voluntary winding up is that the company must be solvent and it is usually carried out with little or no recourse to the courts. The process is commenced by a special resolution of the company in general meeting at which a liquidator is appointed. A vital element of a members' voluntary liquidation is the declaration of solvency which must be made by the directors or a majority of the directors at a board meeting within 28 days of the date that the resolution to wind up is passed. The declaration of solvency is a sworn statement to the effect that the directors have made a full enquiry into the affairs of the company and that having done so; they are of the opinion that the company will be able to pay its debts in full within at least 12 months from when the winding up commences.

Creditors Voluntary Liquidation

This happens when a company is insolvent, the two definitions of insolvency are when its liabilities exceed its assets and it cannot pay their bills as they fall due. These are the two tests for the solvency of a company. It is against the law for a company to continue to trade when they know they are insolvent and as soon as they discover they are insolvent the members of the company can elect at a meeting to wind up the company by way of ordinary resolution. The principal difference between a members' and a creditors' voluntary winding up is that the creditors can choose the liquidator and all the creditors will not be paid in full. A

publicly advertised meeting of the company's creditors must be called for the day of the members' meeting to wind up the company or the following day and a notice sent to all creditors complete with proxy forms and details of the location and time of the meeting. The directors must prepare and present to the meeting a full statement of the company's affairs, together with a list of the creditors and the estimated amounts of their claims. The liquidator will call any subsequent meetings and will present his final account before the final meeting of members and creditors. The company will be deemed to be dissolved, three months following delivery of the liquidator's final account and a return of this final meeting to the CRO. To get further details please [click here](#).

When a company goes into liquidation you will receive a notice of the meeting stating when and where it will be held. You will also receive two proxy forms – a General Proxy form and a Special Proxy Form. The general Proxy form is used to appoint an individual to appear on behalf of the creditor company. As a general rule if you are going along to the meeting as the Credit Controller you should appoint yourself as the representative of your company, if you cannot attend it is always a good idea to get someone to represent you, many will offer this service free of charge and give you a full report of the meeting and a copy of the Statement of Affairs, this can be good to get because you will see if any of your existing customers have been caught for a large amount that could have a detrimental effect on their business.

If you are looking for someone to represent you I can recommend some Companies who will do it for free. You can send them your Proxy forms, make sure you fill out the form correctly and that MUST include the words "duly authorized officer" after the signature of the person completing the form.

Court Appointed Liquidator

This happens when the High Court orders the winding up of a company. A creditor or director can petition the court to have the company wound up or if there is unpaid judgments the High Court can order the winding up of a company on a number of grounds and the most distinctive feature of winding up by Court Order is that the liquidation can be imposed on the company. The grounds on which the Court may order the winding up of a company include where a company is unable to pay its debts, where the company has by special resolution resolved that the company be wound up by the Court, where the company has not commenced

business within one year of its incorporation, or where the company's affairs are being conducted in a manner oppressive to any member. For further details on a court winding up please [click here](#)

In all instances there is an order that the creditors are paid:

1. The Liquidator gets first call on any funds available to conduct the liquidation.
2. If there is any money left over it is divided among the secured creditors e.g. debenture holders or mortgage holders
3. If there is any money left over after step 2, the balance is distributed in proportion to the debt of the preferred creditors e.g. Revenue, wages etc
4. If there is any money left over after step 3, the balance is distributed among the unsecured creditors. This is usually expressed in terms of a number of cents in the Euro. What this means is if there is €10k left over and the unsecured creditors amount to €200k, each creditor will receive .05c for every Euro they are owed.

Another point to note is that sometimes the liquidator can continue to trade if they think the business is worth more as a going concern. If this happens you should open a new account for the liquidator and continue to supply them, you are guaranteed payment for any goods supplied as the liquidator is personally liable for any debts that are incurred from the time of their appointment. If you are supplying goods, you should make sure you have a valid retention of title clause and seek to enforce your retention on any goods that remain on the premises when the liquidator is appointed. Often this is your only chance to get anything back at this late stage. Alternatively you can do a stock take with the liquidator and bill the remaining goods to the liquidator for future use.

Receivership

Most people think that a Receivership marks the end of a business, and while in reality this is often the case, the Receiver has a different role. A receiver is appointed by a debenture holder who holds a charge over one or more of the assets of the business. The receiver has the power to take over the business and act as Receiver/ Manager with the sole purpose of getting back the money that is

owed. Theoretically, as soon as they have taken their money the business is handed back to the directors to continue trading, as you can guess this often brings about the demise of the business. As with the liquidator, you can continue to trade with the receiver and as long as you do business with the Receiver on the same terms as you did with the company they are personally liable for any orders they place with you for goods from the time of their appointment. For ease of administration I would open a new account ABC Ltd (In Receivership) to separate the current debt from the old debt with the company.

Examinership

The Examinership process is unique to Ireland; it is similar to Chapter 11 in the United States and the Court Administration procedure in the United Kingdom and has been in force since 1990. If a company is insolvent or cannot pay their bills as they fall due but there is a reasonable chance that if the current debt burden was lifted there would be a viable and profitable business. They can apply to the court for the appointment of an examiner. If granted the company is placed under protection of the court for a period of ninety days, with a possible extension to one hundred days if a deal is eminent. Effectively the Examiner will go through the books of the business and present a scheme of arrangement to the creditors where they are offered a percentage of what they are owed in full and final settlement on all existing claims on the company. The benefit to the creditor is that they are guaranteed to get something, if the company goes into liquidation chances are they will get nothing. In addition if the company continues to trade they retain a customer and hopefully can recoup some of their losses and more over time. From the companies point of view they get a second chance to continue to trade profitably. In the past the Courts would approve the appointment of an examiner almost without question, in recent times; they are more discerning and have to be convinced that there is a reasonable chance of survival before they will allow a company to go into Examinership. If you continue to trade with a company that is in Examinership, you are continuing to increase your exposure to the business, there are ways to make the examiner liable but further study would be required here. It is also important to note that the protection of the court that I referred to at the start means that during the period

of Examinership you cannot ring the company asking for payment, you cannot pass the account to a legal firm for collection, you cannot pass the account to a collection agency or instigate any enforcement options. You can participate in the debate and either accept or reject the offer. If a certain percentage of the Creditors vote in favour of the scheme of arrangement it will be binding on all.

Collection through the Courts

There are times when all your efforts bring no results, and you have to pursue the legal route in order to secure payment. Before you embark on this route there are a number of things you have to take into consideration.

First and most importantly, does the person or company have any money or assets that you can get in discharge of the debt? If so then have you all your documentation in order to enforce your claim? Are you going to follow through with your promise?

It may be a good first step just to instruct your solicitor just to send a seven day notice, (Sometimes known as an LBA – letter before action) this usually gets a good response and your customer knows you are serious and have escalated the matter. After the seven days a follow up call should be made from your office to inform them that you now require payment to stop the proceedings, depending on the reaction and circumstances you can decide to continue with proceedings or simply write the debt off.

If you continue your solicitors will issue a summons that has to be handed to the relevant person, that document contains a section

Issuing and Service of a Court Summons

If the debtor fails to respond to the seven day notice, I suggest a follow up call is made on the seventh day advising impending legal case and if that fails to get the required response Court proceedings should be issued and served. As with all other matters relating to credit it is important that you follow through with your

promises, if you say you are going to do something – do it, otherwise you will not be taken seriously.

Issuing court proceedings is then served on the debtor.

In District and Circuit Court cases, the Summons is served by registered post. In High Court cases, the Summons must be served personally. A Company is always served by ordinary prepaid post to their Registered Office. There are three different names for these documents depending on the court; in the District Court it is called a Civil Summons, in the Circuit Court it is called a Civil Bill and in the High Court it is called a Summary Summons.

Affidavit of Debt

If the debtor fails to respond within the time frame specified in the summons, you may apply to the court for an order for judgment. This is done on foot of an Affidavit of Debt and without the necessity for a Court hearing.

The Affidavit must be signed by the Creditor and sworn before a Commissioner for Oaths. If you are swearing an Affidavit on behalf of your Company it is important to note that you personally are swearing that the person in question owes the sum in question, so you should take great care to make sure you can stand over this. I have found two extremes, where someone is not familiar with the court system and is not aware of the seriousness of the document, the second is where the person is too familiar with the court system and signs lots of Affidavits every day and becomes complacent on the importance of what they are signing and swearing. It must then be lodged along with other documents in the relevant court office in order to obtain judgment.

Summary Judgment

An order for judgment in favour of a creditor where the debtor does not defend the claim is referred to as Summary Judgment.

Defended Cases

Every debtor has a right to defend any claim against them so you should always be satisfied that the claim you are making is provable. A debtor may notify that he intends to defend a claim. This may be a delaying tactic, but on the other hand, it may be a genuine so you have to be prepared.

There are three courts you can pursue a claim based on the amount involved:

District Court can award amounts of up to €6348 (£5,000 in old money!)

Circuit Court can award amounts up to €38092 (£30,000 in old money!)

High Court has no limit on the amount it can award. There is a relatively new Commercial Court that is part of the High Court that deals with cases for a value in excess of €1m. Which helps to fast track such significant amounts, as it stands you could wait between one and two years to bring a case to the high court.

In all cases the costs can be significant and should be agreed with your solicitors in advance. Tasks like obtaining an undefended judgment is largely administrative and you can ask for a flat fee in each court, if the case is defended you are on a meter and it is as long as a piece of string. Something else you should take note of, every time you write or phone your solicitor regarding a case, no matter how nice and helpful they are, in most cases the meter is running and each contact is being added to your costs. As with all things in Credit make sure you have a full understanding of what you are letting yourself into before you start. If you contact a number of legal firms before you make a decision make sure you are comparing like with like.

The last piece of advice I will give you on the legal side. Make sure you engage a solicitor who specializes in debt recovery, and have the people and the systems to deal with each case passed to them. Far too often solicitors who were doing nothing but conveyancing in the good times, see debt recovery as a lucrative area

for them to change into, and some while they might be wonderful solicitors and very knowledgeable in areas of the law, if they are not set up for this type of work avoid them. It will take you longer and cost you more in the long run.

Consumer Credit legislation

Consumer Credit Act 1995

The 1995 Act applies to any advertisement published or displayed for the purposes of a business carried on by the advertiser and offering:

- A) to provide or arrange to provide credit;
- B) to enter into a hire purchase or consumer hire purchase agreement for the letting of goods by the advertiser; or
- C) to arrange the letting of goods under a hire purchase or consumer hire agreement by another person by a consumer.

If an advertisement mentions a rate of interest or makes a claim in relation to the cost of the credit being offered, it must contain a clear and prominent statement of the annual percentage rate of charge (the APR)

In addition to details of the APR, consumer credit agreements must contain:

- a) a statement of any security which may be required;
- b) a clear indication of any restrictions on the availability of the credit advertised; and

- c) in an advertisement (other than those in relation to house loans) Details of any charges additional to repayment of capital and interest on the sum borrowed.

It is not an offence for credit to be provided at a lower rate than that advertised.

An advertisement may not describe credit as being without interest or any other charges, if the availability of the credit is dependent on the consumer concluding with the creditor or any other person; a maintenance contract (for any goods involved) or an insurance contract, or any other condition; compliance with which would, or would be likely in the future to, involve the consumer in any cost additional to that payable if the goods were purchased for cash.

An advertisement in which a person offers to arrange the letting of goods under a consumer hire agreement, or indicate the availability of such a letting, must include a statement to the effect that the agreement is for letting, hiring or leasing only and the goods remain the property of the owner;

- a) which shall be afforded no less prominence than the sum of any amount payable by the hirer; and
- b) in the case of a visual advertisement, must be enclosed by a boxed boundary line.

Circulars cannot be sent to minors

A person must not knowingly, with a view to financial gain, send to a minor any document inviting the minor to:

- a) borrow credit
- b) obtain goods on credit or hire
- c) obtain services on credit; or
- d) apply for information or advice on borrowing credit or otherwise obtaining credit or hiring goods.

Credit providers cannot contract out of liabilities or restrict consumers' rights under the 1995 Act

Except where otherwise provided for in the 1995 Act, a credit provider cannot restrict or limit any liabilities.

Any agreement in which the credit provider seeks to exclude the consumer's rights is unenforceable.

Statements or notices excluding consumer's rights.

A credit provider is prohibited from:

- a) displaying on any part of any premises a notice;
- b) publishing or causing to be published an advertisement;
- c) supplying goods bearing a statement; or
- d) furnishing or causing to be furnished a document;

which purports to exclude or restrict any liability imposed on any person or any right conferred on a consumer by the 1995 Act

a. Dealing with MABS and other debt management agencies

MABS is the Money Advice and Budgeting Service. It is a State body set up to help people who find themselves in financial difficulty and need help in dealing with their creditors. The normal process is that the person who owes money contacts their local MABS office; there can be a waiting list for an appointment with them for many weeks. They will go through their income and expenditure with them and come up with a plan to clear the debts over time. In some cases the MABS officer can negotiate a reduction in the debt with some suppliers. That is the theory, in reality in my experience MABS can do more harm than good especially to Credit Unions that they don't consider to be priority debt. I have heard of Credit Unions who had deals with members who were paying €30 per week and MABS told them to only pay €10.

The main problem when a customer or member goes to MABS they somehow feel that they are now absolved of all responsibility as MABS are now dealing with their affairs. This could not be further from the truth. They created the debt and they have responsibility to make sure it is repaid in full. MABS will accept everything they are told as gospel and will write down what the client tells them to write down, you don't have to accept their findings, you don't have to accept the budget as presented and you can question any item, particularly if it appears to be unreasonable.

Similarly for the other Debt management companies, they are not regulated in this country, they take money from the people that can least afford it and make sure that their fees are paid before anyone else. I would strongly advise my members / customers to avoid these companies, most Credit Union Credit Controllers are trained to deal with members in distress and can present a workable plan with absolutely no expense to the member and their money is going in its entirety to repay debt, which is in the best interest of the customer/

member and all the creditors. You should always engage directly with your own clients and you can make a decision whether you will engage with these agencies either MABS or private companies.

A word of warning here, if a customer/ member goes to MABS or another agency and makes you an offer that you reject and proceed down the legal route, you must have all your facts in front of you and be able to present them in a convincing manner to a judge because the case will be defended and if the customer/member stands up and tells the judge that they made an offer of all they could afford and it was rejected, you are on the back foot in the courtroom, and that is why you will need to be convincing.

Being effective

b. Dealing with stress

This is a real issue for everyone dealing with Collections in the current climate. Some see this as a mainly a consumer issue, from my experience, stress is a factor throughout the credit profession and one that has to be mentioned, and addressed as a matter of urgency. Due to the nature of the role you are dealing

with other people's problems all day long. People are sharing their stories with you and you would want to be made of stone for some of it not to have an effect on you. This module is important to keep your own head in the right place to enable you to deal with the issues in a professional manner and when the day is over to leave the problems behind you and head home with a clear mind.

Easier said than done you will say, and I agree. I will give you some insights, some tips and techniques that should be of benefit to you. The truth is that if you become stressed out you are no good to anyone, your employers, your friends, your family or even the people you are talking to on a daily basis.

There are two main causes of stress: one is having too much to do with too little time and the second is that feeling of being pulled apart because as you are doing something your mind is racing because of all the other things you have to do. In these difficult times bosses are constantly looking to get more done with little resources, other departments are always looking for short cuts to achieve their own ends with no regard for the needs of others, customers are more demanding in their requirements, and in times of recession there is an expectation to receive more for less. Particularly in credit there is a lack of understanding and appreciation for the work we do, simple tasks like allocating a payment to a large account is invisible from the greater business viewpoint, it can take time and we all have seen the problems it can cause if not done correctly. To be successful you have to explain in great detail the complexities of the role and the benefit to the business of each task that has to be performed and the cost implications of not doing it correctly. Now we know the realities we have to deal with on a day to day basis so now what we need is a strategy to deal with. What I am offering here is a possible solution, we know from previous modules that people are different and what works for one person may or may not work for someone else. We also know that there are some universals, and that is what we are going to deal with here. I know that stress is something that can have an impact on every aspect of your life for the purpose of this course we will be looking almost exclusively on how to manage the stress at work, we will also look at some strategies to keep your stress levels to a minimum beyond the office as well.

The starting point is your “Job description” – this details what you are being paid to do. If what you are doing is not reflected in the written job description then you have a real problem, because your boss will think that you are doing one thing while you are really doing something else. So don’t wait until the next appraisal interview to dust off your job description, because you know that is going to form the basis of the meeting, so the earlier you start preparing the better, and right now is a good time to start. Look at the key deliverables and make sure you are delivering on these in full every time. Just to be clear, I am not advocating that you adopt a highly unionised response to anything you are asked to do i.e. “I’m not doing it because it is not on my job description.” You should question “Is that being added to my job description?” so you will get the credit for taking on more responsibilities.

The reality is that a major factor determining your stress levels at work is your relationship with your boss. Working for someone who rates you, who trusts you and relies on you, and coupled with that you are doing a great job doing something you enjoy is the recipe for a great working environment. If on the other hand you don’t get on with your boss and you seem to be in conflict all the time, this will lead to a strained working environment that will increase your stress levels. In a job your number one priority has to be your boss, even above the job you think you are being paid to do.

Think back on a job you had in the past that you really loved.

Think back on a job you had in the past that you really hated.

Could it be that the job you loved was one where you got on really well with the boss?

Could it be that the job you hated was when you were working for someone you couldn’t stand?

This is true in most cases. Working on the same page as your manager, where you have the same goals, the same priorities and the same bottom line will be a rewarding experience. If added to that you know you can rely on your boss to

support you when you make a stand on some issues, that makes things even better.

Now here is where it gets a bit difficult, if you agree with the preceding paragraph, (if you don't please email me and I'll gladly look at your personal experience and give you my opinions) and you see the benefit of being aligned with your boss, the onus is on **you** to change. Now if the situation has been going on for a long time, you may have done irreparable damage to the relationship, I still think you can turn it around if you make it a priority. You have to put what your boss wants at the top of your priority list all the time. That means if you are in the middle of a report and the boss asks you for something, you drop it willingly and get the requested information immediately. You take every single opportunity to impress your boss and show them how good you are, you see, if you don't you are wasting your time. Some people will rubbish this, and call it sucking up to the boss, and we have all met and dislike people like that, this is not what I am suggesting at all. As an employee, your main role is to report to your boss, to perform the functions that are a priority for them, you need to meet as often as necessary to check you are on the right track, that could be once a day or once a quarter, depending on the perceived seniority of your role, and your ability to deliver on what is put in front of you. Your boss decides who has an easy life and who has a hard one, your boss decides who gets to go and who gets to stay, your boss decides who gets promoted and who gets left behind – you can work the rest out for yourself!

We are talking about managing stress here, and the closer the link between what your boss wants and what you are doing the lower the stress levels for both of you. If you are seen to be the one increasing the bosses stress levels, it is not a good career move! Unless you are working for a total idiot that you are knowingly going against in the hope that more senior management will recognise your contribution and reward you accordingly, this is a high stakes game and the cost of failure is your job. The irony is that even if you are doing a great job and even if everyone on the board knows the manager is not up to the task, they will act at

their own speed to rectify the situation and will not take kindly to any perceived disloyalty.

The second cause of stress at work is having a large number of jobs hanging over you, particularly the jobs you don't like to do. After your boss has been looked after the next priority should be the jobs you don't like doing. This runs counter to what everyone does. If you have a job to do that you don't like doing, the natural tendency is to put it off for as long as possible, and the problem with this strategy is that it doesn't go away! Worse, it will hang over you like a cloud, and will dampen the satisfaction of each success you have, because you know that at some stage you are going to have to do that job. The solution is to do it first, come in earlier in the morning if you have to and get it done and off your desk. You will find that the relief of knowing it is gone will give you a new energy for the rest of the jobs in hand.

If it isn't possible to do the job you don't like right now, simply schedule a time for it and put it out of your mind.

One other thing you might find useful about stress is that it is completely internally driven by your thought processes, so it might sound simple but if your thoughts are causing you to experience stress all you have to do is simply choose different thoughts. Sometimes that is difficult in chaos so the first stage is to create order for yourself; stress is also based on fear, so you should create some certainty for yourself.

Simple: make a list! Take time to write down everything you have to do. You can have a separate list for work and personal things you have to do. The first process is to empty your head onto a piece of paper in no particular order, simply as things occur to you. You can use the pile of paper on your desk as a prompt for your list. As soon as the list is complete, go down through it and establish what you have to do yourself and the tasks that could or should be completed by someone else.

I find making four piles out of the paper on your desk is useful. The first pile is the rubbish and can be dumped or shredded as appropriate. This should include and

information that is available online, any reading material you put aside to read at a later date, if you haven't read it in the past two months, the simple fact is you are never going to read it! Get rid of it and if it is good it will come back in a different format at a later stage. There was a survey completed that concluded that if you put time aside to read all the magazines and articles you have put aside for reading it would probably take you about two months to get through it all, and we both know that is never going to happen – so dump it! The second pile is for referring, if there is a document that you can't action until someone does something first, then put that person's name on it either by writing their name on it or if it is an important document put one of those horrible post its on it with the person's name and the action you want them to take e.g. "Pat, please sign this credit request and return it to me before 3pm on Thursday". Remember you can delegate upwards and sideways as well as downwards here! The third pile of paper should be the papers you need to file: invoices, credit requests, back up etc that you either have to keep for regulatory purposes or simply to cover your back. Then the fourth and final pile contains the things that you and only you can complete. This becomes your action pile. Then get rid of all the rubbish, get the referral documents onto the correct desk. Put your filing in a safe place out of sight until you get around to it, and then focus on the action pile. Make a list of every piece of paper and the action associated with it, do this in outlook, task manager or even an A4 notepad. I find it useful to number each sheet of paper and have a corresponding number on the page. This makes it easier to find things at a later stage. Then putting into practice all you have learned here, prioritise the list in order of importance. As you look down the list ask yourself: "what is the most important thing I can do right now?" then complete that action 100% and deliver it to wherever it has to go before you move on to the next task and so on. I also find it helpful to close Outlook completely when I am completing important tasks. Depending on the nature of your work you can check your emails after each task has been complete, and build in a few minutes between tasks to clear your inbox. I have created a folder in my inbox called "items dealt with" and I drop the emails in here when I am finished, that way I keep the inbox clear and haven't got hundreds of folders to search for things when I need them. This simple task of

getting on top of the paper on your desk and your emails gives you a great sense of control. Coupled with an excellent diary and follow up system you are confident nothing will get missed, and this is one of the greatest cures for stress I have ever come across. There are times we feel overwhelmed by the workload and the sheer volume you have to cope with. Getting physically in control helps you to get mentally in control and that is what this section is all about. No matter what the issue is or how daunting it may seem, writing it down and then breaking it down into bite sized pieces will give you all the confidence you need. If you really want to get in control, write a date beside each action item that you have to complete, so even if you can't get to it today you know it will be dealt with in a reasonable time.

As new items arise, depending on the importance of them you can either do it straight away or put it on your list to be completed at a later time. At the end of the first month, review all your action points, if there are tasks that have not been completed, have a chat with your boss to see if they are still required, chances are if a whole month has gone by with no action or repercussions, maybe the task should be deleted. Even if it is a good idea, we all have to work with limited resources and have to constantly make decisions about what gets done and what gets left behind, as long as you are making these decisions consciously and communication regularly with your boss you have nothing to worry about.

The best time management tool I have come up with is my "time management matrix" – you can download your copy by selecting the "useful links" tab on the website www.declanflood.com and you will see it on the list. [*when you are there check out the other links which I hope you will find useful*]

This matrix is really challenging, if you fill it in every hour, it will help you to get on track, if you don't, you can find that you lose hours in the day when you simply don't know what you were doing. The "what am I going to do today" section should include the things you are going to do today – no matter what. If you have to stay late, work through lunch whatever. Just a note on that, you need to take breaks and you need to take a lunch break. The habit of eating your sandwiches while drinking tea or coffee at your desk as you flick through emails or reports is

not recommended. You should make a deliberate effort to get away from the desk, even for a walk around the block at lunchtime or a visit to the canteen to chat with colleagues – this helps recharge the batteries and gives you new energy for the rest of the day.

Different people are different, we have already established that, so different people have different attention spans, some can concentrate on a task for hours, and others get bored after a few minutes. The more senior a manager is, generally the shorter their attention span. In my experience the optimal time is 90 minutes. You should work flat out for 90 minutes and then reward yourself with a break, if that is a walk around the office, a cup of tea or a smoke stand up from your desk clear your head and then come back and start again. Jack Black (the Scottish motivational speaker, not the actor!) calls this Quality Recovery Time and it is necessary to remain at peak performance all the time. Athletes warm up, perform and then warm down. You should adopt this model if you want to stay at your best for longer. The alternative is that you simply run out of steam and you find you are more productive at some part of the day than another. This strategy helps you perform at a consistent level all day long.

Throughout the course there has been very few absolute rules, often the answer is “it depends” – here is an absolute rule for working: Never bring work home with you. If you decide to work from home for a day, and this can be very effective, set aside a part of your home that becomes your office for the duration. Go to work at a set time, take your breaks at a set time and finish work at a set time and then you “go home” to your family or significant other, leaving the work behind you.

Taking work home after a long day is counterproductive in the extreme. Here is a secret most will never share with you, even your boss who leaves for home with piles of papers and reports to work on when they get home, most of the time they are never worked on, never opened and generally never completed. The effect this has on your home life is invisible and as you are sitting watching some program on the TV, the work you brought home is haunting you: “you should be working, you should be working” so not only does the work not get done but your

enjoyment of the TV is destroyed. Work when you are at work, in exceptional circumstances work late if you have to meet a deadline, then when you are at home be 100% there for the people you care about. Final point, some people simply get into the habit of working late, and find themselves putting work aside for later “I can do that when everyone is gone home”. This habit is wrong, and if you are constantly working twelve or fourteen hours a day, you will find it takes the full fourteen hours to get eight hours work done!

If you need a time of no interruptions to complete an important task:

- Book a meeting room and go in alone to complete the task. Explain I am at a meeting between ten and half eleven this morning
- Agree with a colleague that you divert your phone to them for an hour and you will accept their calls for an hour later on.
- Turn your mobile to silent, put your desk phone on voicemail, and put an out of office on your email stating when you will return.
- If you work in an open plan office, some abuse the open nature of the workplace to drop in whenever they feel like it. I devised a system where I placed a red sticker on the partition beside my desk that was my “do not disturb” signal to all. As long as you don’t overuse it this can work well.

c. Priorities

d. Dealing with returned cheques and direct debits.

Most organisations do not treat this with sufficient urgency, check your bank every single day and if you see a returned item you must either phone them or write to them on the day requesting full payment and advising them of whatever charge is going to be applied for the event.

Using third party agencies

When it comes to the collection process you should have a documented procedure that sets out what action should be taken when. I call this the funnel method where there is escalating action on a declining number of balances.

Every business should construct their own collection funnel, this determines what action happens on what accounts at what time. Every case will be different. Customers should be categorised into the following segments VIP, High Risk, Medium Risk and Low Risk.

Your key/ VIP accounts who have the highest balances a call should be made a week before the month end to make sure everything is ok, they have all the invoices and we will make payment before the end of the month. Because of the relationship and importance of these accounts they would not go on automatic stop supply and would NEVER receive standard letters that are sent out to other customers. Every effort should be made to get these payments in before the end of the month to boost cash flow.

High Risk accounts – should be categorised into value, the higher the value the higher the risk, these accounts should be prioritised right after the VIP accounts. For these accounts the account should be put on system hold on the first day the account is overdue, and arrangements made for payment before more goods can be dispatched or services completed. It doesn't have to be adversarial – a simple “will you have a cheque for the driver/ serviceman” is all it takes. Great care should be taken to ensure this category never receives extended credit and never exceeds the line of credit assigned to them.

Medium Risk Accounts particularly if the balances are not high are the third priority and should be dealt with in the second week of the month. Because of the low perceived risk you should continue to supply them with goods and services until you contact them and agree payment.

Low risk accounts are ones that have been with you for years and you just know they will pay in full, maybe not always on time. Because of the Low risk nature of the account you can be most lenient with these in terms of extending the time and the value you are prepared to extend to them.

Sample Collection Funnel:

	VIP Customer	High Risk	Medium Risk	Low Risk
Terms -7	Call to confirm payment for end of month	Call to confirm payment for end of month		
Due date	Make sure payment is in. If not a follow up call should be made.	Text message/ Phone call depending on the amount due.		

1st Working Day	Post Statements	Post Statements with hand written note Orders go on stop	Post Statements highlighting overdue amount	Post Statements
Day 2-8	Phone calls to non payers	Phone calls to non payers	Text message	
Day 9-16	Escalate collection to senior manager	Letter 1	Phone calls to non payers	Text message
Day 17-23	Personal Letter to your contact	Follow up call	Letter 1	Phone calls to non payers
Day 24-30	Follow up call/ personal call.	Call in Person to collect account	Follow up call Orders go on stop	Letter 1
Day 31-40	Orders go on stop	Final Notice	Letter 2	Follow up call
Day 41-50	Pass to 3 rd Party Collection Agent	Pass to 3 rd Party Collection Agent	Follow up call	Orders go on stop
Day 51-60			Final Notice	Letter 2
Day 61-70			Pass to 3 rd Party Collection Agent	Call in person/ phone
Day 71-80				Final Notice
Day 81-90				Pass to 3 rd Party Collection Agent

Of course there are going to be events, excuses, stories and a million other things that could happen to disrupt this model. We still should stick to this formula or a version close to it to keep the focus on collections. The funnel should be amended by you depending on the number of balances you have and the credit control resources available to you and how easy it is to automate some or part of the function. Within the system I have included pass to a third party agency, in my experience the use of third party agencies such as debt collection companies can have a real benefit if completed proactively in a timely manner. There are a number of things you can do to increase the effectiveness of the process. By far the biggest problem is that balances sit on a ledger for far too long before action is taken. If you wait for six months beyond the due date, your chances of getting paid are around 50:50. If you wait for a year you only have a 10% chance of

success. So pick a point when you have exhausted all your own efforts and pass them to a reputable company straight away. Make sure you have built in a monitoring system for all accounts passed and again a rule of thumb is that it should not take any longer than another 28 days. If you want to use or copy a service I am currently promoting [click here](#) for details. This is really cost efficient and really works.

Conclusion

I hope you have enjoyed the content. I hope you have found the solutions to most of the problems you encounter on a daily basis. I hope you will be able to handle most of the problems and objections and situations you come across in a more professional and controlled manner. The topic is continually evolving; there are always new problems and thankfully new solutions. Just because you have come to the end of this material does not mean you have come to the end of your contact with us. At all times you are welcome to contact us with any issue you come across that is not covered in the material above. If there are a number of contacts on a particular topic, we will include a new section in the course and send you an update of the content for twelve months after you complete the course. We are working on ways of extending this period even further; I'll let you know as soon as it is in place. I hope you have completed the tests as you went along, even if you didn't you can still go back and complete them now. You can also submit your assignments even at this late stage. The final piece in getting your qualification is the written exam – check on the website www.icmt.ie for the next exam date. I know some people wait until everything is perfect before they feel confident enough to sit the exam. It is based solely on the material presented and your personal experience; you are living this stuff every day and should be able to sail through the exam. If you have come this far, just a little revision should be enough to get you through.

There are eight questions on the exam – one from each module; you only have to answer four. Which means half the material will get you through and then you only have to get 40% to pass the exam. If you were having any doubts I hope this insight will help dispel them and give you the confidence you need to get the qualification you deserve.

All the material contained in this course is copyrighted by the author Declan Flood. It cannot be reproduced, copied or used in any other context without prior permission. If you are only using a line or two simply give us credit and we will be happy, if you are looking to lift a whole section to include in your own training program – that would upset us!

If you know of anyone else working in Credit Control who would benefit from doing the course, please let them know, if you think your team would benefit from completing this course as an in-house training program, please let me know and it can be arranged.