

Claiming Unpaid Fees

Full pre-action protocols can be viewed here:

http://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_ced

Preliminary Steps (before bringing a claim)

Key considerations

- Continue to communicate in a professional manner, keeping the lines of communication open is key to successfully reclaiming fees.
- Continue any contracted work for the client to avoid counter claims for breach of contract.
- Decide how far the debt is worth pursuing before you begin and that the client has sufficient funds to pay should you wish to pursue.

Stage 1: *Ensure your claim is valid.*

- Check and double check your invoices and time sheets for errors.
- Check your bank account for any payments prior to communications.
- Make sure you have a list of work completed, handover dates or other evidence that will prove the existence of your work.

Stage 2: *Communicate with your client.*

- Check that invoices have been received.
- Remind them of invoice and dates payment was due.
- Email time sheet and dates of work completed so they are aware of what they are paying for.
- Remind them of the terms of their contractual obligation to pay you for the service you have provided.

Stage 3: *Establish the basis for their non payment.*

Two possibilities:

1. That they believe you are not entitled to the funds
 - Do they agree that you have completed the work?
 - Is the work acceptable to them?
2. That they have insufficient funds to pay you
 - Would they consider negotiating payment in instalments?
 - Would you accept a discount?
 - Ensure payment plans are written and agreed by both parties.
 - Any correspondence in which you accept a lower payment should be marked “without prejudice” - legal term, protects your position should you wish to claim payment in full at a later date.
 - Would they give you a post-dated check? - they may agree and then stop the check before payment, which provides evidence of an undisputed invoice.

Stage 4: *Alternative Dispute Resolution (ADR)*

You wish to recover your funds but would like to retain the working relationship, therefore you could attend mediation, adjudication or arbitration. Typical sessions are £150 for 1 hour.

Stage 5: *For outstanding fees exceeding £750:*

- Issue a statutory demand against the individual or the company.
 - Payments must be made within 21 days, client may dispute within 18 days. Failure to dispute is accepted evidence that the debt is good and undisputed.
- Upon failure to pay the creditor may present a petition to the court for bankruptcy or insolvency which can cause substantial harm to commercial reputation - a company would wish to avoid this.

Pursuing a Claim

Key Considerations:

- Litigation is only worthwhile if the client has the means to pay - although these proceedings may push you towards the top of the list for payment if there are other creditors and limited funds.
- Look out for any counter-claims for negligence and non-performance; keep your professional indemnity insurers and funders informed.

Stage 1: *Formal Letter requesting payment.*

- If all other approaches are being ignored, send a formal letter requesting payment.
- Advise that legal proceedings will be considered within 14 days if payment is not received.
- Set out the amount of money owed and that this can be paid to prevent the matter going to court.
- Include details of why you are going to court (no response, payment deadlines, other steps taken to resolve the matter)
- Include both your name and address AND the clients name and address.

Stage 2: *Issuing Proceedings.*

Use 'money claim online' for fees up to £100,000: <https://www.moneyclaim.gov.uk/web/mcol/welcome>

Full instruction booklet available here and should be read thoroughly prior to making a claim: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520203/money-claim-online-user-guide.pdf

You will need to register as an **Organisation**, and then make a claim. The process is supposed to take no more than 30 minutes, once complete it CANNOT be amended. Therefore you should ensure you have the full registered name of the company.

You will need to pay a fee to use this service:

Claim amount	Paper form fee	Online claim fee
Up to £300	£35	£25
£300.01 to £500	£50	£35
£500.01 to £1,000	£70	£60
£1,000.01 to £1,500	£80	£70
£1,500.01 to £3,000	£115	£105
£3,000.01 to £5,000	£205	£185
£5,000.01 to £10,000	£455	£410
£10,000.01 to £100,000	5% of the claim	4.5% of the claim

You can claim for interest, the online calculator can do this for you. Ordinary payments are made at 8%, commercial payments can be at a different rate. Further information is available here: <https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt>

A information pack will be sent to your client within 5 days of making the online claim. They have 14 calendar days to acknowledge receipt either in writing or online and then 28 days to object or defend the claim.

If the matter is not resolved:

For claims less than £10,000 the court may ask you to use the court's small claims mediation service to reach an agreement. You should comply, the court looks favourably on claims where every effort to comply and solve out of court is taken.

An additional fee will be payable:

Claim amount	Fee
Up to £300	£25
£300.01 to £500	£55
£500.01 to £1,000	£80
£1,000.01 to £1,500	£115
£1,500.01 to £3,000	£170
Over £3,000	£335

If no response is received:

You may request a judgement through the online service.

Stage 4: Court hearing

If they deny the claim and you disagree with their response you may need to attend a court hearing.

The court can order bailiffs to collect the money.