

Contracting and late payment: correct legal procedure when invoices remain unpaid

Contractors suffering late payment for unpaid and overdue invoices must follow the correct debt recovery procedure and process to maximise their chances of successfully obtaining payment from clients and agencies.

If the contractor has performed their contracting services exactly according to specification, the client has signed the timesheet, if required, and the invoice has not been disputed by the client or agency, there is no legal reason for the contractor not to expect payment.

But some clients and agencies may try to avoid paying a contractor's invoice, particularly if it is the final invoice of a contract. They can sometimes invent spurious reasons for delaying, or in extreme cases simply ignore contractors' attempts to seek payment. When this happens, the contractor's only course of action may be to pursue the client or agency through the courts, so correct procedure is essential.

Step 1: Contact the debtor

Step 2: Use a credit collection agency

Step 3: Letter before action

Step 4: Letter of intended proceedings

Step 5: File claim with MoneyClaim Online

Step 6: Alternative dispute resolution (ADR) [if debtor agrees]

Final : Court ruling, bailiffs, forced liquidation

Start by contacting the debtor

Contractors should assume from the outset that any correspondence, including notes of telephone conversations, may be subject to the scrutiny of a court. A judge will take a dim view of any contractor who did not follow due process and try every reasonable means to amicably resolve the dispute before seeking a legal solution. That means avoiding using phrases such as 'see you in court', no matter how tempting and stress relieving it may be!

So 'step 1' begins by emailing, sending letters by recorded delivery and then telephoning the client or agency, all the while explaining in reasonable terms why the client or agency should pay the invoice immediately. At this stage, the contractor should give the client or agency seven days to respond with payment.

Bear in mind that for some firms will have a strategy of fobbing off their creditors with lame excuses, or ignoring them, until they see that you are prepared to take legal steps.

So, if payment doesn't arrive after your initial attempts, and there are no other legal complications, then 'step 2' would be to use a [credit collection agency](#), which in most cases will result in the client or agency paying. If not, then 'step 3' is a 'letter before action'.

Letter before action and letter of intended proceedings

The [letter before action](#) informs the client or agency that payment is overdue and that legal action will commence immediately if the debt is not paid within seven days of the date of the letter. If this letter is ignored, 'step 4', is to send a letter of intended proceedings.

If the contractor is planning to use HM Courts Service's online service for recovering debts, [MoneyClaim Online](#), then following [HM Courts guidance](#), procedures and any [pre-action protocols](#) that apply is essential at this stage. Not to do so means that even should the contractor win the case, they may end up having to pay their own costs, plus those of the client or agency. But the client or agency also has to abide by these protocols.

The letter of intended proceedings should offer the opportunity for arbitration ("alternative dispute resolution"), and the contractor's willingness to settle without going to court if the client or agency meets the required settlement amount. The settlement amount is the cash amount that the contractor will settle for, which could even be higher than the original amount because of additional costs.

Potential responses to the letter of intended proceedings

Having received the contractor's 'step 4' letter, the client or agency will typically respond in one of four different ways:

The letter of intended proceedings is ignored, in which case the contractor should proceed to 'step 5', which is to file a claim with MoneyClaim Online

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The client or agency dissembles without following pre-action protocols, in an attempt to make the contractor delay legal action further. The response to such fobbing off should be a letter from the contractor explaining that the response is not satisfactory, and why, and that court action will proceed within 72 hours unless payment is received. The contractor should then proceed to 'step 5' if payment in full is not forthcoming

The client or agency agrees to the offer of arbitration, or alternative dispute resolution (ADR), 'step 6' of the process

The client or agency settles.

Contractors taking 'step 5' and filing with MoneyClaim Online should follow the instructions provided on the MoneyClaim website and wait for their court date. If the case is not straightforward, the contractor may wish to consider professional legal representation. The [fees for MoneyClaim online](#) vary according to the size of your claim, but are in the hundred of pounds, not thousands.

A court ruling and enforcement

Assuming there are no complications or legal points to argue and the contractor stays on top of their MoneyClaim Online case, then the likelihood of obtaining a ruling in the contractor's favour is high.

However, if the contractor receives a ruling in their favour and the client or agency still does not pay, the ruling remains on a public register for six years. This impacts negatively on the ability of the client or agency to secure business credit in the future. The threat of this 'damage' to their credit rating may well be enough to persuade the agency or client to pay.

The contractor has a [number of options to extract payment](#), varying from sending in the bailiffs to preventing the sale of assets by the client or agency. As a last resort, if the amount owed is above £750, the contractor can apply to have the client or agency put into compulsory liquidation, but this can be expensive.

Ideally, contractors should attempt to resolve payment disputes amicably. And many such disputes can be avoided before a contractor ever signs a contract, if they [undertake due diligence](#) and also ensure their terms and conditions are clear.

But if the courts become the final option, the contractor's adherence to process and protocols is essential to maximise the chances of securing the money owed.

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