



Problems getting paid?

Advice on your options from CIAT

The way you handle a dispute in regards to non-payment will to some extent depend upon the way in which you have framed your conditions of engagement and the amount of monies outstanding.

The traditional method of resolving such matters is through the courts, but if the amount you are owed is substantial, this can cause further problems due to excessive legal costs.

Presently most practitioners will, if the amount is less than £5,000, go through the **small claims process** in the County Court, where the court costs are limited to approximately £120, plus any recovery costs of roughly £55.

If the amount should be larger, but under £15,000 you will have to use the **County Court fast track system**. Matters now become more complex as you will have to comply with the requirements of the Civil Procedure Rules (CPR) and court pre-action protocols.

Whilst you may act as your own 'advocate' in court, the amount of recoverable costs is limited. In most cases it would be wise to get legal advice, which can help guide you through the process. This is not a quick process, although the court tries to start the hearing within 30 weeks from the time the case is allocated.

For sums between £15,000 and £50,000 the Multi Track County Court process is necessary and this will usually involve both solicitors and barristers with the resultant high legal costs. You should be mindful that in such cases a proportion of the other sides legal costs will be payable by you, if you lose.

Obviously some members will hold **legal insurance** to cover for such eventualities, although you should read the conditions carefully as it may not include for an action to recover professional fees.

If you do not have suitable legal insurance or the possible legal fees are too high, consider ***ad hoc*** adjudication.

As you will realise if you are dealing with a business there is a statutory right to adjudication. What a lot of practitioners do not understand is, that you can write these terms into any contract and once agreed between the parties they are binding and allow a cheaper route to recovery of monies owed.

With the exception of the small claims County Court procedure, adjudication should prove both quicker and less expensive and this is especially so if the amount of outstanding fees are quite large. You should therefore include within your terms of engagement a paragraph outlining the right to adjudicate any dispute, such as:

Notwithstanding the client's residential status or the nature of the works or services offered or undertake, where a dispute arises it shall be subject to *ad hoc* adjudication. The process to be used will be that as indicated within the Scheme for Construction Contracts. The adjudicator is to be nominated by the Chartered Institute of Arbitrators and he shall determine the recovery of all costs and expenses, however arising, within his decision, if so required by either party. The adjudication shall be determined by documents only and the adjudicator shall provide reasons for his decision.

Editors' note: this is a suggested form of words only. Any such wording should be checked with a qualified legal professional before being given to a client.

Presently the courts have supported awards made by an adjudicator and once received you can proceed to obtain a court order for payment. Naturally a reticent client may try to appeal the award, but he would have to prove that the adjudicator lacked or exceeded his jurisdiction or acted unfairly, and generally most ploys of this type fail.

Another matter to be considered is the payment of interest on any outstanding debt, as this can be quite substantial if the amount of the fee is large or has been owed for some time.

Interest can be claimed automatically if you are a limited company and are dealing with another limited company, but a lot of practices are sole traders or partnerships and may be dealing with individual clients.

In such cases there is no automatic right to interest unless claimed through the court or is within the agreement of the parties.

It is therefore important that your conditions of appointment include the provision for the specific amount of interest that will be applicable if payment is not forthcoming.

If you reflect the terms of the 'statutory interest' as indicated in the Late Payment of Commercial Debts (Interest) Act 1998, the courts will usually consider this as an acceptable rate.

This was before 7 August 2002, eight per cent above the current Bank of England's base ('repo') rate and is still an acceptable rate. A simple line in your fee conditions, such as 'Interest will become chargeable on all late payments at eight per cent above the current bank lending rate', will suffice.

Finally, remember you must agree and confirm in writing all the terms of your appointment with the client.

Check list:

1. Place an adjudication clause within your terms of engagement.
2. Include the provision for interest within your terms of engagement.
3. If you are dealing with large amounts of fees, take out legal insurance to cover the costs of recovery.
4. Agree your terms of engagement with your client and confirm this in writing.
5. If possible obtain the client's signature indicating his agreement to your terms of engagement.

With the future looking slightly harder for our profession, one should not allow any person to renege on his responsibility to pay you for your professional services and hard work, especially when you have prepared for such an eventuality.