

# GUIDE TO CHASING PAYMENT

*Updated Feb 2021*



There is no single right way of chasing debt. This guide aims to help tackle some of our members' most common questions and provide further information about how best to go about chasing payments. It does not constitute legal advice and members should note that, in some cases, it will be appropriate to seek independent and professional advice.

## In this guide you'll find the following information:

- Before you start
- How to put your case
- Possible action
- Conclusion

## 1. Before you start

Before taking further action, ask yourself the following questions:

### a) Can the SoA help?

If you are a member of the SoA, we strongly suggest that you [contact us](#). We may well be able to help you without legal proceedings needing to be brought and we also find it useful to hear from our members direct because it helps us identify common problems that may need to be raised with policymakers and/or persistent debtors.

For 10 tips on resolving any dispute that may arise with a debtor, [consult our Before You Sign blog here](#).

### b) Is it clear that you are owed the money?

A clearly owed debt, such as a fee promised for an article which has subsequently been published, is usually straightforward in legal terms. But, in some cases, things are less simple. For instance, if part of your advance was due on 'acceptance' of the work and your publisher refuses to pay on the grounds that the material is not acceptable – even if you suspect their real motivation is something else – the situation may be less clear cut. Again, [contact us](#), providing us with a copy your contract so that we can give you the best possible advice.

It is worth noting that the absence of a formal written agreement does not mean that there is no reasonable prospect of chasing a payment. An enforceable contract can arise orally or by correspondence. Similarly, the cancellation of an event by an organiser for reasons beyond your – and even its – control does not mean that you should never expect to be paid. In any case, [contact us](#) and provide us with full details surrounding any discussions and correspondence that you may have had with the publisher or event organiser so that we can advise you more fully.

### c) What are you hoping to achieve?

Payment is the obvious answer, but what else? If you are owed money do you want to work with the company in question again? Is the commissioner keen to keep you on its books or would going your separate ways suit one or both parties?

Sometimes, writers would prefer to carry on with the relationship if the problem is sorted and they are promptly paid. Others are as keen to terminate what they feel is a contract 'gone bad'. What you are hoping to achieve is likely to affect how you go about chasing a debt and whether, in doing so, you invoke any 'breach of contract' provision provided for in your contract.

If a company is seeking further work from you, it may be appropriate to turn this to your advantage: say you would be delighted to do the work, provided that any other monies owed to you are paid without delay and there is a clear undertaking that future monies will not be delayed and/or that a part-payment is made up front.

Whatever outcome you are seeking, you are more likely to succeed if you keep your tone professional and balanced, however difficult the situation may be for you. As ever, [contact us](#) so that we can help you find the appropriate way to word any demand for payment.

#### **d) Do you suspect the company could be in financial difficulties?**

If so, the bottom line is that you should act quickly. In most cases, once a company goes into administration, receivership or some other form of insolvency proceedings, your chances of receiving payment are slim. For more on this, [consult our insolvency guide](#).

#### **f) What if I assigned copyright for a fee?**

If so, be reassured that you are likely still to be able to pursue the debt. However, note that copyright is likely to remain with the company that owes you money. These cases are tricky, not least because the exact position will depend on the wording of your contract. You should therefore [contact us](#) before chasing payment to establish whether, as well as demanding payment, it is reasonable also to expect to the reversion of your rights.

#### **g) Is the company you are pursuing based in the UK?**

If not, first check that you have complied with all the formalities - many foreign companies cannot, or will not, release payments unless and until they are in receipt of the relevant double-tax forms and/or tax registration numbers. The best advice when dealing with non-UK companies is to secure as much of any payment as you can upfront to avoid difficulties arising in future.

If you do need to chase payment, think carefully. The financial and legal complications of pursuing an action in a different legal jurisdiction from your own - if indeed it is possible to do so - are likely to be disproportionate relative to the sums recoverable. It is also worth identifying if the company has any assets in this country that you can reasonably chase as this may tip the balance in terms of whether the costs of recovery exceed the amount owed to you.

#### **h) Did you pay towards the cost of publication?**

If you paid towards the cost of publication and are subsequently disappointed by the quality of the publication or the publisher's efforts in marketing your book, be aware that subsidy publishers such as these tend to be very careful in the wording of their contracts. However difficult the circumstance, you may well find that you either have no right to a refund or, where there is an arguable case, the costs of bringing proceedings to enforce that refund exceed the amount of money you paid the publisher. The best advice is to [contact us](#) before signing a contract of this - or indeed any - kind. In cases such as these, it is often the case

that authors' concerns will be to secure their rights, rather than recover their investment, which is another reason why it is so important to [contact us](#).

## 2. How to put your case

### a) Make payment the easy option

What you want is to extract the payment speedily, with as little hassle and expense as possible. So, make the least troublesome and least costly option for the company to pay you.

### b) Do not delay

If a deadline for payment has passed, chase it immediately. Do not leave it months before doing anything about it. It suggests that you are not overly bothered, and if the company is in financial difficulties, it can profoundly affect your chances of securing payment. That said, if you have delayed in chasing payment for whatever reason, it does not follow that you should simply write it off - there is usually still time to act.

### c) Take it in stages and be clear about what you are asking for

In the first instance, state clearly to the debtor how much you are owed, for what work, and the date on which the money should have been paid. Include any invoice or other reference number the company may have given you and, if relevant, point out that you are VAT-registered and what your VAT number is.

Set a reasonable deadline, specifying what you want to happen by that deadline, and what the consequence will be if it is not met. Once set, stick to it. For example, if an invoice specified payment within 30 days of receipt of your work, it may be appropriate to say that, if payment is not received within a further 14 days, you will be putting the matter in the hands of the SoA. It may then be appropriate for us to do likewise on your behalf, giving the debtor 28 days in which to pay over and above the 30-day deadline provided for in the invoice. Incremental pressure on the company, together with a reasonable opportunity for it to make payment, is usually the best approach and may well help your claim if it is subsequently heard in Court.

If your normal means of communication is by phone, be sure to follow it up with a letter or email confirming whatever was agreed. Equally importantly, be sure to check whether your contract specifies to whom and/or how formal communications should be sent. Members are welcome to [contact us](#) with a draft before a letter is sent.

### f) Escalate your claim

If the person you are writing to stalls or does not reply, it is usually appropriate to write again, copying in the person's supervisor and/or a company director. Irrespective of whether you are sending an email or letter to a branch office, make sure that you send a copy of a letter to the registered office of a limited company that owes you money and any other address(es) specified in a written contract. To find a UK company's registered address, consult Companies House online [here](#).

## 3. Possible action

Depending on the circumstances, one or more of the following steps may be appropriate:

### **a) Involve the SoA**

Although we will be happy to talk each step through with you and help you draft appropriate correspondence, the SoA's policy is to not intervene directly unless and until a member's own efforts have failed. The reason for this is practical: our intervention acts as an escalation and, if successful, serves as a relatively cost-free means for a member to recover monies owed. Notably, if you are owed money by a debtor that cares about its reputation and doesn't want a default to be exposed, a fair warning that involvement of the SoA will be your next step may prove sufficient.

### **b) Adding statutory compensation and interest to monies owed**

If there is a clause in your contract relating to late payment, you must charge compensation in line with the amount provided for in the agreement. If not, you are able to charge compensation as specified by the Late Payment of Commercial Debts (Interest) Act 1998:

The amount of statutory compensation you can claim is:

**£40.00 for *each* invoice up to £999.99;**

**£70.00 for *each* invoice between £1,000.00 and £9,999.99; and**

**£100.00 for *each* invoice over £10,000.00.**

Note that the fixed compensation rates relate to each invoice. Accordingly, if you are owed two amounts by the same company - say, £250.00 and £300.00 - you are able to bring a single claim for £550.00, together with compensation of £80.00 and contractual or statutory interest at the rate specified in your contract or as follows:

The Late Payment of Commercial Debts (Interest) Act 1998 also allows you to claim interest on debts from the day after the agreed date for payment at the rate of 8% above Bank of England's base rate.

If a payment was due to be paid on 31 March, you could claim interest from 1 April up to and including the date on which payment was made. If no date was agreed for payment, interest would instead be payable after 30 days from the latest of the date on which the contract was formed, the date of invoice or notice of the amount of the debt was issued.

In the case of the author owed two sums of £250.00 and £300.00 above, it is important to calculate the rate of interest for each sum.

A common tactic in chasing payments is to offer to waive any amounts of compensation and interest owed if the money is paid now. saying that if the company pays you within a given deadline, you will seek only the monies owed and waive any claims for compensation and interest. In other words, make it cheaper for the company to pay than delay.

**For more on debt calculations and recovery of debt, consult Gov.uk [here](#).**

### **c) Invoke the termination clause in your contract**

Many publishing contracts include a clause to the effect that if the publisher is in breach of contract and fails to remedy the breach within, say, 30 days from written notice by the author, the contract will terminate. In such event, a publisher's right to produce further copies of your book and/or grant future sub-licences will cease.

Before giving notice, consider whether you want to terminate the contract or simply be paid. The two are usually separate considerations. If you do wish to terminate a contract, it is

important to word such notice accurately, referring to the precise numbering and wording of the contract and to contact us before doing so.

#### **d) Consider imaginative settlement options**

For example, if you know that a publisher is sitting on a fair number of copies of your book but has cash-flow problems, you might want to consider making a 'without prejudice' offer to accept copies of your book in lieu of monies owed. If you are confident that you could sell such books profitably, this may be a viable option. In other cases, it may be appropriate to make the publisher a 'without prejudice' offer that you will waive any monies owed provided that you all rights are reverted to you in order that you can take your work elsewhere.

In any case, it is always sensible to contact us before making any 'without prejudice' offer as this could profoundly affect your rights if your offer is accepted and you subsequently change your mind.

#### **e) Consider informal negotiations, non-binding mediation or formal means of Alternative Dispute Resolution**

It is always worth considering whether a virtual call or face-to-face meeting- with or without a trusted third-party present - might resolve issues more quickly and cheaply than bringing legal proceedings or engaging in binding non-Court proceedings like arbitration. In many cases, this can be demanded by invoking an appropriate Alternative Dispute Resolution provision in your contract. However, before even going down this route, it is usually important to exhaust all other avenues of negotiation.

#### **f) Take legal action**

When considering legal action, first decide if the debtor is a "can't pay" or a "won't pay". Again, the two are separate and distinct:

##### **(i) Won't pay**

Suing is an option to consider if you live in the UK, the company is UK-based and/or or the contract was concluded in the UK or it contains a 'jurisdiction' clause providing that any disputes should be settled under English and Welsh, Northern Irish or Scots law.

Having a County Court Judgment (or 'CCJ') made against a company does not guarantee that it will pay up, but in many cases will prompt it to do so, if solvent. Most trading companies will not want to have outstanding debts publicly listed against their names for financial and legal reasons. For more on this, consult the step-by-step guide on how to make a claim for money owed via Gov.uk [here](#).

Before taking legal action, you must give the debtor full details of your claim and an opportunity to pay the debt within a reasonable timeframe as well as confirming that action will be taken if the debt is not paid. Recall our advice about '[being clear](#)' above.

The Small Claims Court track procedure is for claims where the amount is under £10,000.00. Court fees apply in respect of each claim. For more on this, consult the Court's fee table [here](#). If you know that you are owed money but you are not sure how much, you can still claim an unspecified amount limited to £10,000.00 under the Small Claims Court track procedure.

Any money claim must be made by the person who is owed the money - you cannot usually delegate it to us or anyone else. The great advantage of the Small Claims Court track procedure is that costs are largely limited to the Court fee. Lawyers do not generally need to be involved (although you may instruct a solicitor if you wish and it

is commercially worthwhile to do so) and, in most cases, the losing party pays only the other side's fixed costs, so if your claim is unsuccessful, you are not then liable for the defendant's (expensive) legal costs. To make a claim easily online, click [here](#).

If your claim is for a fixed sum of over £10,000.00 but under £100,000 you can still make a claim online but note that such claims are not allocated to the Small Claims Court track.

In a word, if you are owed more than £10,000.00, it is likely to be sensible to instruct a solicitor to ensure that you do not risk having to pay a defendant's legal costs, if you are unsuccessful. Quite apart from this, it is likely to be the point at which instructing a solicitor privately becomes commercially sensible. As a first step, we strongly recommend that you contact us as a first step.

Where there is a dispute relating to copyright infringement or other intellectual property rights, rather than a simple breach of contract for non-payment, a separate Court track is available under the Intellectual Property Enterprise Court ('IPEC'). If the damages owed to you are likely to be less than £10,000.00, a claim can be brought under IPEC's simplified small claims track [here](#) and, in most cases, this can be done online. If the amount of damages exceeds £9,999.99, then it is likely to be commercially sensible to instruct a solicitor to ensure that your rights are properly protected and you maximise your chances of success. In cases such as these, IPEC's multi-track procedure would be appropriate, further details of which can be found [here](#).

## (ii) Can't Pay

If the debtor is insolvent, consult our [insolvency guide](#) for more. As a rule, prospects for recovery of debts are likely to be slim, but there are considerations surrounding recovery of your rights, further details of which are set out in more detail in our insolvency guide.

## (iii) I'm not sure whether it's a "can't pay" or a "won't pay"

If the debtor is not currently insolvent, it may be sensible for you to serve a Statutory Demand for the money you're owed instead of bringing legal proceedings under IPEC or the Small Claims Court track. For more on what a Statutory Demand is and how to go about doing so, click [here](#).

You must make a Statutory Demand in the prescribed form [here](#) and you can make one against an individual or a company without needing a solicitor, provided that the debt is less than six years old.

If the debtor does not pay the amount owed or agree to your Statutory Demand within 21 days of service, you can then:

**Bring bankruptcy proceedings against any individuals who owe you, at least, £5,000.00; or**

**Wind up a company that owes you, at least, £750.00.**

Note that you have four months to apply to bankrupt or wind up your debtor although if you're late in doing so, you can usually explain to the Court why this is the case.

# 4. Conclusion

Common themes throughout this guide are to stay calm, adopt a business-like approach and contact us as soon as possible before deciding how best to proceed. As a rule, do not delay

in chasing payments but, equally, do not be deterred if you have been overly generous with a debtor. For a helpful summary of all the options, consult the Gov.uk guide [here](#).

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