



# 30-Day Payment

Insisting on payment within 30 days



*We are not going to be unreasonable but we want fair terms. Payment within 30 days is reasonable.*

NSCC President



Please note that this guidance is designed to give general guidance on best practice; it is not intended to provide legal advice. NSCC and the organisations responsible for its content do not accept any liability arising in any way from relying on this guidance. If you require advice on a specific issue, you should seek your own independent legal advice; NSCC Specialist Contractors can contact the NSCC legal and contractual helpline provided by Wedlake Bell on 0844 249 9871.

**Wedlake Bell**

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# Introduction

From 1 January 2008 it is recommended that clients in the public sector adopt the Office of Government Commerce (OGC) Fair Payment Charter, which requires payment within 30 days throughout the supply chain. NSCC has found from past research that 95% of Specialist Contractors routinely wait more than 30 days for payment. Starving businesses in the specialist sector of monies they are owed limits their ability to invest properly in growing and improving their businesses in terms of health and safety, training, and plant and materials, and the entire construction industry suffers as a result.

NSCC wants the principle of 30-day payment embodied within the Fair Payment Charter to be extended to all construction projects and is encouraging Specialist Contractors to insist on payment from their clients within 30 days.

This guidance note is one of a series published by NSCC as part of its Fair Payment Campaign, which was launched in September 2007 to improve payment practices in the construction industry. The campaign has 3 objectives: certainty of payment, 30-day payment periods, which is dealt with in this guidance note, and the removal of retentions. For advice on achieving certainty of payment or removing retentions from your contracts, you can download the appropriate guidance note from [www.fairpaymentcampaign.co.uk](http://www.fairpaymentcampaign.co.uk).

By following the advice in this guidance note and implementing the campaign objectives within your business, you can help NSCC to change payment practices and make the construction industry a fairer place for all Specialist Contractors.

To show your support for the NSCC Fair Payment Campaign, sign up to the campaign at [www.fairpaymentcampaign.co.uk](http://www.fairpaymentcampaign.co.uk) and use the campaign logo on your company stationery and invoices.

## The Fair Payment Charter

The OGC Fair Payment Charter, which includes a requirement for 30-day payment periods, is recommended for use by all public sector clients in England and their supply chains. From 1 January 2008, central Government construction clients are expected to adopt the Charter, which is also strongly supported by the Local Government Task Force.

A copy of the Charter can be found on page 5.

### Clients: the key to success

The Fair Payment Charter is client-led: the client and the contractor will commit to the Charter at the outset of a project, and the contractor, as part of that commitment, will be required to step the Charter down throughout the project supply chain.

The Charter is a commitment given in good faith; it is not legally binding on any party in the supply chain. However, it has been drawn up at the instigation of public sector clients with support from all parts of the industry. It is clients that will be the driving force for the cultural change, which is necessary to embed the principle of regular and timely payment within the industry, and it is vital that the efforts they have made in producing the Charter are recognised and supported by every tier of the supply chain.

You are encouraged to sign up to the Charter wherever you have the opportunity to do so; even though it is not legally binding, it does have the potential to radically change payment practices in the construction industry if enough Specialist Contractors insist that its requirements are met.

### Making sure the requirements of the Charter are met

On a public sector project, the client should enter into a Fair Payment Charter with the main contractor. The contractor should then do the same with each member of his supply chain. If you are working on a public sector project, you should make sure your proposed payment terms meet the requirements of the Charter before you sign the contract.

During pre-contract negotiations, check the payment provisions in the contract documentation to ensure that they meet the requirements of the Charter. In terms of 30-day payment, you should generally be entitled to a valuation within a month of commencing your works and to receive payment for that work no more than 30 days later. If you notice something

that does not comply with the Charter (such as payment periods longer than 30 days), you should give the contractor the opportunity to review it by writing to him to point out that the Charter applies to the project and refer him to the clauses in the contract documentation that are non-compliant (see letter 1 on page 6).

It is important to get the terms right upfront; if you wait until you have started work to point out to the contractor that he is not complying with the Charter, it could be too late as the Charter is not legally binding and he will be able to fall back on whatever has been agreed in the contract.

Once you have been appointed, you should:

- > Check that there is a Charter in place – there should be on public sector projects which commence on or after 1 January 2008
- > If there is a Charter, ask to sign up to it; if there isn't, contact the client to find out why there isn't
- > Invite your suppliers and sub-contractors to sign up to the Charter too.

### How to report non-compliance

It is inevitable that a number of contractors will try to avoid the intention of the Fair Payment Charter by drafting payment provisions which comply with the letter of the Charter but do not actually meet its objectives. You should draw any clauses like this to the attention of the client. The aim of the Charter is to improve the flow of cash through the supply chain to generate cost and efficiency savings which will flow back up to clients in the form of better delivery of projects and lower costs. If there are companies attempting to get around the requirements of the Charter, the benefits to clients will not materialise and they will want to know about it!

If you are not comfortable speaking to the client directly, you can inform NSCC of those instances where the commitments in the Charter are not being met. If you are not being paid (preferably by BACS) within 30 days or are having retention withheld against you when the contractor isn't, you can email NSCC in confidence at [enquiries@nsc.org.uk](mailto:enquiries@nsc.org.uk) with details of the project and the particular requirement of the Charter that is not being complied with. NSCC will then contact the client to find out why the Charter is not being enforced on that project – but will keep your name out of it.

Don't forget though, the Charter applies to *everybody* within the supply chain – not just the contractor and his first-tier Specialist Contractors. If you are working on a public sector project, you are also bound by the Charter and should make sure you meet its requirements in respect of your own supply chain.

## Model 'Fair Payment' Charter<sup>1</sup>

*Fair and transparent payment practices are an essential underpinning to achieving successful integrated working on construction projects. In working with each other in good faith and in a spirit of mutual trust and respect, we agree that we will meet the 'Fair Payment' commitments set out below:*

- *Companies have the right to receive correct full payment as and when due. Deliberate late payment or unjustifiable withholding of payment is ethically not acceptable.*
- *'Fair payment' will apply equally between the client and lead contractor and throughout the supply chain<sup>2</sup>.*
- *The process will be transparent in order that members of the supply chain have certainty of how much and when they will be paid.*
- *Companies will consider, where appropriate, operating relevant contracts on an open book basis.*
- *The correct payment will represent the work properly carried out, or products supplied, in accordance with the contract. Any client arrangements for retention will be replicated on the same contract terms throughout the supply chain. Any withholding of payment due to defects or non-delivery will be proportionate and demonstrably justified in line with arrangements made at the time of contract.*
- *To ensure effective and equitable cashflow for all those involved, all contracts will provide for regular payments and have payment periods not exceeding 30 days.*
- *In order to avoid payment delays, the client and all supply chain members will agree payment procedures at the outset of their contracts. Payment will be through electronic BACS transfer and will apply throughout the supply chain.*
- *Monitoring and auditing and problem resolution procedures will be agreed between the parties.*

*We the undersigned agree that this Charter is not intended to be a legally binding document and not used in construing any contractual commitment.*

<sup>1</sup> *The Charter sets out the values and arrangements relating to payment practices consistent with integrated working. The Model Charter is flexible to allow for adaptation and can either be a standalone document or part of a wider partnership charter. In either case it is not intended to be legally binding.*

<sup>2</sup> *The client will sign the Charter at the outset. Contractors and suppliers subsequently engaged would be expected to sign the Charter before appointment.*

Letter 1 –

*Notifying the contractor of non-compliance with the Charter*

*<Insert address of contractor>*

*<Insert date>*

Dear *<Insert name of contractor>*

**Re: The Fair Payment Charter – *<Insert name of project>***

I am sure you are aware of the Fair Payment Charter, which is being implemented by clients in the public sector from 1 January 2008 and which we believe applies to the above project.

Key points within the Charter include:

- Correct full payment as and when due
- Payment periods not exceeding 30 days
- Client arrangements for retention to be replicated on the same contract terms throughout the supply chain.

We have noticed that the attached clause(s) within your contract documentation does/do not comply with the Charter and invite you to reconsider them.

We will be looking to sign up to the Charter on this project and would be grateful if you could confirm that you will abide by its requirements.

We look forward to hearing from you and seeing the attached clause(s) reviewed in light of the requirements of the Charter.

Yours sincerely

*<Insert signature>*

*<Insert name>*

## The Cost Of Late Payment

Late payment hurts everybody in the supply chain from main contractors down to suppliers. However, the damage is felt most by Specialist Contractors as almost all of their costs have to be paid out *before* they receive payment for their work – even when they are paid on time! This is because they employ more direct, weekly paid labour; invest more in capital equipment and materials; and meet higher costs of finance.

Specialist Contractors are adversely affected by late payment in two ways: firstly their profits are reduced due to the direct cost of financing overdue debt, and secondly their liquidity is reduced, limiting their ability to reinvest or secure finance to grow and improve their businesses.

If a Specialist Contractor turns over £12 million a year (£1 million per month), he would expect to have a maximum 2 months' of outstanding debt (£2 million). If, for example, a contract started on 1 September, he would invoice for the work done in September at the end of that month (30 September) and receive payment for it on 30 October. This means that, on 29 October, he would have carried out 2 months' work with no income, which would reduce to 1 month's work on 30 October when the September invoice was paid.

However, if payment of the September invoice was delayed by 30 days to the end of October (60-day payment), he would have had to carry out 3 months' work with no income, financing an additional £1 million. This would not be financed for just one month; it would roll over so that, if all his clients paid on 60 days, his business would have to finance an additional £1 million indefinitely! Assuming that finance could be obtained for 6% per annum (a low estimate), this would equate to £60,000 per year in the cost of finance.

The lack of liquidity caused by late payment is less tangible but just as real. If that hypothetical Specialist Contractor had the missing £1 million available to him as capital, he could invest it in people, plant, equipment, training and safety. This investment would benefit the Specialist Contractor by generating a better return than the cost of finance, and the industry as a whole by improving efficiency, quality, and safety.

Paying Specialist Contractors on time would release millions of pounds in investment capital into the hands of those businesses best able to help the construction industry deliver a better product for its clients and a safer environment for its workforce.

## Making Sure 30 Days Means 30 Days

In simple terms, 30-day payment means that payment is received 30 days after the end of a valuation period (the 'valuation date'), which is typically at the end of a calendar month.

To achieve this in accordance with the payment provisions of the Housing Grants, Construction and Regeneration Act (the 'Construction Act'), the 'due date' should be the same calendar date as the valuation date. The final date for payment (the date on which payment should actually be received) should then be 30 days from the due date. Fixing the due date is fundamental: a payment cycle flows from the due date and, if the due date is not a fixed date because it is dependent on another event such as the issue of a certificate under the main contract, the due date and consequently your date for payment can slip.

### Fixing payment dates

The best way of ensuring that 30 days means 30 days is to include a schedule of calendar dates in your contract, which establish as a minimum the application, due and final dates for payment. Many contractors already include schedules in their standard terms – although they do tend to be for payment periods of longer than 30 days! Nevertheless they can easily be adjusted to meet the 30-day requirement.

For contractors which do not provide a schedule, you can use your own. An example of a model schedule for 30-day payment is shown on page 9. All you need to do is take a blank copy to the pre-contract meeting and agree the dates there and then.

*Schedule of Interim Valuations/Payment Time Scales*

<i>Valuation No.</i>	<i>Sub-contractor's application date</i>	<i>Value up to and including date</i>	<i>Due Date</i>	<i>Notice date to sub-contractor* (latest)</i>	<i>Payment to sub-contractor (latest)</i>
<i>1</i>	<i>Fri 24 Aug 2007</i>	<i>Fri 31 Aug 2007</i>	<i>Fri 31 Aug 2007</i>	<i>Wed 5 Sep 2007</i>	<i>Sun 30 Sep 2007</i>
<i>etc.</i>					

*Sub-contractor's application date denotes date by which the sub-contractor application must be received at the site office marked for the attention of the Project QS.*

\* This refers to the Section 110(2) notice under the Construction Act, which in practice is not always issued; if you do not receive this notice, your right to payment will not be affected.

If you have your own standard terms and conditions, you should make sure that:

1. Your payment terms specify that payment becomes due on a calendar date or a certain day in the calendar month (e.g. the last Friday) in which the work was carried out
2. The final date for payment is 30 days from the due date.

An example clause you could use is as follows:

*The first payment shall become due on the last Friday in the calendar month in which work under the contract commences. Subsequent payments shall become due on the last Friday in each calendar month. The final dates for payment shall be 30 days from the dates that the payments become due.*

## Clauses to watch out for

A number of contractors include clauses in their 'standard' terms which imply 30-day payment, but sign up to them and you will find you have a much longer wait for your money! Generally speaking, such clauses extend the period(s) between application, due and final dates for payment to give the impression that payment terms are more favourable than they really are. It is worth bearing in mind that some of these may actually comply with the letter of the Fair Payment Charter even though they will not meet its underlying objective.

Clauses to watch out for include those that state:

- > Payment becomes due 30 days after the valuation date, as there is actually a further 30 days on top of this until the final date for payment which is when you get your money (60 days in total).

### **Beware!**

*"Payment shall be due at intervals not exceeding 30 days after the valuation date. The final date for payment shall be not later than 30 days after the date when it becomes due."*

- > The due date is at the end of the month *following* the month in which you carried out your works, as the final date for payment will be another 30 days from this (again 60 days in total).

### **Beware!**

*"Payment shall become due on the last day of the month following the month in which the work was carried out. The final date for payment shall be 30 days after it becomes due."*

- > 'Business days' as this will have been defined elsewhere as Monday to Friday, making 30 business days almost 45 actual days.

### **Beware!**

*"The final date for payment will be 30 business days from the valuation date."*

You should also check that there isn't a prolonged period before you are entitled to a first valuation. Make sure your first valuation date is no more than 30 days after the date on which you start work. If you are doing off-site work such as design and/or fabrication, the first valuation cycle should commence no more than 30 days after you start your off-site works.

## Milestones

Milestone payments, although relatively uncommon, are a recognised method of valuing construction work. Under a milestones system, instead of a monthly valuation of work done, there is a pre-agreed schedule of payments for completing different stages of the work. This can be for either construction elements such as foundations, cladding, fit out etc. or parts of the project such as buildings (block A, B, C etc.) or sections of a road on a civil engineering project.

If you do agree to milestone payments, you must ensure that the milestones are adequately defined and actually apply to *your* works. For example, if the main contract milestone is 'foundations', this could include site clearance, enabling works, piling, pile caps and ground floor slabs. However, it is unlikely that one Specialist Contractor would carry out all of these operations, so you must make sure that *your* contract milestone relates to the part of the work that *you* do. If you don't, you will only be entitled to payment when the last part of the work under the main contract milestone has been completed.

Having agreed what your milestones are, you then need to make sure that payment is made within 30 days of achieving those milestones.

The final thing to be wary of when it comes to milestones is the contractor deciding to re-sequence the works, which could leave your works incomplete for a period of time. For example, there may be some non-critical work that hasn't been designed because resources are committed to more urgent issues. Nevertheless, if this work forms part of your milestone, you could find that you are not entitled to payment for the rest of your work.

The key to making milestone payments work is to ensure that your ability to achieve a milestone is within your control and not dependent on the actions of others.

## Getting Paid On Time

Once you have agreed your entitlement to be paid within 30 days, there are a number of things that you can do to increase your chances of actually getting your money on time.

### Control the process

- > **Know the contractor** – When you allow contractors time to pay, it should be a conscious decision based on knowledge; if you knew a contractor was about to go bust, it is unlikely that you would allow 30 days credit. By conducting basic credit checks on contractors and not trading with them unless you are satisfied that they can pay you, you can greatly increase your chances of getting paid.

### NSCC Credit Checking Service

The best way of checking whether your client is credit-worthy is by obtaining a credit rating from a credit-reference agency. NSCC provides its Specialist Contractors with access to a free credit checking service. Contact your trade organisation with the name of the company that you wish to credit check, and it will conduct a search on your behalf and email a report directly to you.

- > **Protect yourself** – If you consider a contractor a risk (because, for example, they always pay late), there are a number of steps you can take to improve your likelihood of getting paid such as insisting on payment upfront; asking for a Director's personal guarantee or a parent company guarantee; or taking out credit insurance.

## NSCC Credit Insurance

In partnership with Centor Insurance and Risk Management, NSCC offers its Specialist Contractors access to an exclusive credit insurance facility. Centor can rate the contractors that you work for to help you be more selective, and, subject to underwriting, will provide credit insurance, which will guarantee your cash in the event that your client does not pay you or goes bust.

For an information pack or to take advantage of this facility, call **0844 249 5901**.

- > **Establish contacts for queries** – To encourage prompt payment and ensure you are in a position to resolve any queries that arise, it is advisable to establish a contact for payment queries, as having a ‘friend’ in the contractor’s company can prove invaluable when chasing an unpaid invoice. The most effective way of persuading a contractor to pay up is a telephone call. Call your contact a week before your account is due to be paid to make sure that your payment is in the contractor’s system – this will give you time to resolve any problems before the payment becomes late.
- > **Submit applications on time** – You can’t expect to get paid until your application has made its way into the contractor’s payment process, which means it is essential to submit applications on time and get proof that the contractor has received them. To ensure that an application is paid promptly, it is advisable to show your payment terms clearly on the front e.g. *Payment Terms: 30 days from date of application*. Including as much information as possible in respect of the amount claimed (e.g. by means of an attached schedule showing how the amounts claimed have been calculated) will make it harder for the contractor to dispute or reduce your payment.
- > **Don’t give contractors an excuse** – Contractors often operate computerised systems that will not allow payment to be made without certain information being in place. Typically this will include your CIS, VAT registration, insurance and bank details; however, you should check your contract for any additional requirements. Make sure that the contractor is given all this information with every application for payment and obtain proof that he has received it.

## Pay via BACS

The Fair Payment Charter specifies payment via BACS throughout the supply chain. As part of its Fair Payment Campaign, NSCC is calling on Specialist Contractors to switch to BACS for making and receiving payments as it is easier and more reliable and secure than cheques. For information on implementing BACS payments within your business, see the BACS feature on pages 15 and 16.

## Project Bank Accounts (PBAs)

Where a Project Bank Account (PBA) is operated, interim payments are agreed in the normal way and an analysis of the payments to each member of the project supply chain (down to a pre-agreed level) is then forwarded to the bankers operating the PBA. The client deposits money directly into the PBA, which is distributed by BACS to the contractor and other members of the supply chain in accordance with the breakdown analysis.

PBAs have a number of benefits including transparent management of cash flow, a reduction of financing charges across the supply chain, less opportunity for payment abuse and reduced impact of insolvency of a supply chain member.

The decision to use a PBA on a project usually lies with the client. Although, at present, PBAs are quite rare, there is a degree of enthusiasm amongst public sector clients to increase their use. Where a PBA is in use on a project, you will benefit from supporting it.

## BACS

BACS is a secure, reliable and simple service which enables businesses to make electronic payments directly into bank or building society accounts. It is likely that you are already paying your salaries/wages this way, and you can increase the benefits of BACS by using it for all your business payments including those to your suppliers. BACS is easy to set up and a more efficient way of making and receiving payments than cheques.

### *The benefits of BACS*

- > **Saves time and money** as you are not handling and posting cash and cheques.
- > **More secure** than cash and cheques, which can go missing.
- > **Better cashflow** because payments arrive instantly as cleared funds and are available for use on the day they are received. They also begin earning interest immediately. Paying by BACS means that you can make your money work for you up to the last minute as you know exactly when funds leave your account.
- > **More reliable** with businesses using BACS typically making and receiving payments earlier than those that don't.
- > **Better payment terms** can be negotiated by those paying more efficiently.

### *Receiving payments by BACS*

Using BACS to receive payments is simple. To encourage your clients to pay you via BACS, you should include on all your invoices your bank sort code and account number with the message '*Pay Me Direct*' in bold. Prior to implementing payment by BACS, it is advisable to write to each of your clients to let them know that you would like to be paid via BACS (see letter 2 on page 17).

### ***Making payments via BACS***

To set up BACS to pay your suppliers, you will need to:

#### **1. Contact your bank**

Your bank will be able to advise on the most appropriate and cost effective method for your business, and provide you with a step-by-step guide on how BACS works. They will also authorise your use of the service.

#### **2. Purchase the software**

All you need to pay via BACS is a PC and the appropriate modem and software, which you will be able to obtain from your bank or approved software supplier.

#### **3. Obtain your suppliers' details**

Once you are set up to pay by BACS, you will need to obtain the sort codes, account numbers and account names of all your suppliers, which you can do by writing to each of them using letter 3 on page 18.

For further information on BACS, visit [www.paymedirect.co.uk](http://www.paymedirect.co.uk).



## Letter 2 –

### *Requesting payment via BACS from a client*

*<Insert company address>*

*<Insert date>*

Dear *<Insert name of your client>*

#### **Re: BACS Payments**

We are writing to inform you that we would prefer to receive all future payments via BACS directly into our bank account, the details of which are as follows:

Bank: *<Insert name of your bank>*

Account No: *<Insert your 8-digit account number>*

Sortcode: *<Insert your 6-digit sort code>*

You are still welcome to pay us by other means if you prefer, but direct payment via BACS will save us both time and administration costs. When paying by BACS, please quote our application/invoice number as a reference to help us identify your payment.

If you require any further information on how to pay us via BACS, please do not hesitate to contact us or visit [www.paymedirect.co.uk](http://www.paymedirect.co.uk).

Yours sincerely

*<Insert signature>*

*<Insert name>*

Letter 3 –

Seeking a supplier's details to pay via BACS

<Insert company address>

<Insert date>

Dear <Insert name of your supplier>

**Re: Payment via BACS**

We are writing to inform you that we are now using BACS to pay invoices and transfer payment directly into your bank account.

In order to pay you via BACS, we require the sort code and account number of your bank account, and we would be grateful if you could complete and return the form at the end of this letter.

If you require any further information on receiving payment via BACS, please do not hesitate to contact us or visit [www.paymedirect.co.uk](http://www.paymedirect.co.uk).

Yours sincerely

<Insert signature>

<Insert name>

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Our details for payment via BACS are:

Name: \_\_\_\_\_ Bank: \_\_\_\_\_

Position: \_\_\_\_\_ Branch: \_\_\_\_\_

Company: \_\_\_\_\_ Sort code: \_\_\_\_\_

Address: \_\_\_\_\_ Acct name: \_\_\_\_\_

\_\_\_\_\_ Acct No: \_\_\_\_\_

Tel No: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## What To Do If You Don't Get Paid

Regardless of how much effort you make to get paid on time, it is inevitable that payment will sometimes be late. You should establish an internal mechanism to make sure that you are reminded of any overdue payments on a regular basis, as this will allow you to chase them up by contacting the company to prompt them that payment is late.

There will be times when the contractor is entitled to withhold payment because he has a valid claim against you for breach of contract. In this case, he should serve a withholding notice in accordance with Section 111 of the Construction Act; if he doesn't do this, you will be entitled to be paid regardless of any claims the contractor may have. Remember though that the contractor may be able to avoid serving a withholding notice if there are defects in your works and your application has not taken account of those defects.

Occasionally payment can be delayed by a genuine error or oversight. Although this doesn't make it right and it is still frustrating, commercial reality dictates that you should try to deal with the delay amicably where possible. However, if you are firm and show that you know your rights, you are less likely to be taken advantage of when it comes to getting paid on time.

### Chasing payment

If you have not been paid in full by the final date for payment and no withholding notice has been issued, you should write to the contractor informing him that your invoice is overdue and requesting payment immediately (see letter 4 on page 20). You are asked to send a copy of this letter to NSCC to assist NSCC in compiling evidence on contractors that do not pay their supply chains on time.

Letter 4 –

*Chasing payment of an overdue application for payment*

*<Insert address of contractor>*

*<Insert date>*

Dear *<Insert name of contractor>*

***Re: Application no. <insert application no.> – <insert amount of application>***

The above application dated *<insert date of application>* is now overdue for payment. I would remind you that our terms are 30 days and would request that payment is made immediately. Our bank details for payment via BACS are as follows:

Bank: *<Insert name of your bank>*

Account No: *<Insert your 8-digit account number>*

Sortcode: *<Insert your 6-digit sort code>*

As stated on our application, we reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act (at 8% over the Bank of England base rate) in the event that we are not paid according to our agreed credit terms.

If you have any queries regarding this application, please do not hesitate to contact us, otherwise we will look forward to receiving payment shortly.

Yours sincerely

*<Insert signature>*

*<Insert name>*

cc. NSCC  
Royal London House  
22-25 Finsbury Square  
London  
EC2A 1DX

## Charging interest

If the contractor pays you later than agreed, you have a legal right under the Late Payment of Commercial Debts (Interest) Act to claim interest on the overdue amount and a small amount of compensation. It is advisable to make reference to this right in your contracts and on your applications (see below) even if you don't intend to actually charge interest, as it may act as a deterrent against late payment. Where you have agreed a credit period with a contractor, the payment is late if it is made after the last day of the credit period – if no credit period has been agreed, the Act sets a default period of 30 days.

*We will exercise our statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act (at 8% over the Bank of England base rate) if we are not paid according to our agreed credit terms.*

## Suspending work

If your efforts to chase the overdue payment are not successful, you can issue notice of your intention to suspend work until payment is received. The notice period has to be *at least 7 days* under the Construction Act and some contracts will require longer than that. You should resist any attempt to extend the notice period beyond 7 days as this will just increase the amount of time you have to wait before you can suspend. You don't have to wait until you have chased payment to suspend work; you are actually entitled to issue a notice of suspension the day that the payment becomes overdue. If and when you do this is a commercial decision for you to make.

If you are considering suspension, you are strongly advised to contact the NSCC legal and contractual helpline provided by Wedlake Bell on **0844 249 9871** as wrongful suspension will almost certainly amount to a breach of contract on your part.

## Going to adjudication

If you have exhausted negotiations and have still not been paid, you can refer the dispute to adjudication. Adjudication is a 28-day dispute resolution process whereby an impartial third party adjudicator decides the issues referred to him by the parties. To initiate adjudication, you must serve on the other party written notice of your intention to refer the dispute to the adjudicator or Adjudicator Nominating Body (ANB) named in your contract. If the contract does not name an adjudicator or ANB, you can approach AICA, which acts

for NSCC, a named ANB in the JCT contracts. All NSCC Specialist Contractors are entitled to free adjudicator nominations from AICA; for further information, contact AICA on **0844 249 5353** or visit **www.aica-adjudication.co.uk**.

For handy tips on adjudication, NSCC has published its Top 10 Tips for Adjudication; for a free copy, contact NSCC on **0844 249 5351** or visit **www.nsc.org.uk**.

### Using a third party

If all usual efforts fail, a client may not pay until threatened. Send a final demand threatening the use of a third party such as a reputable debt collection agency, or use a solicitor to issue a strong letter to try to avoid proceedings. NSCC Specialist Contractors can contact the NSCC legal and contractual helpline provided by Wedlake Bell on **0844 249 9871**.

You can use the Small Claims Court yourself for debts under £5,000 and the County Court for debts up to £150,000 – for further information, go to **www.hmcourts-service.gov.uk**.

## Checklist

1. Ask to sign up to the **Fair Payment Charter** on public sector projects that you work on, and report any non-compliance with the requirements of the Charter to either the client or NSCC.
2. Fix **30-day payment dates** in your contract by including a schedule of calendar dates for application, due and final dates for payment.
3. Switch to **BACS** for making and receiving payments by writing to your clients to give them your bank details and your suppliers to obtain theirs.
4. Once you have agreed 30-day payment terms, increase your chances of actually getting your money on time by making sure you meet your **contractual requirements** and submit your applications on time.
5. **Chase** payment as soon as it becomes overdue and claim interest on the overdue amount.



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