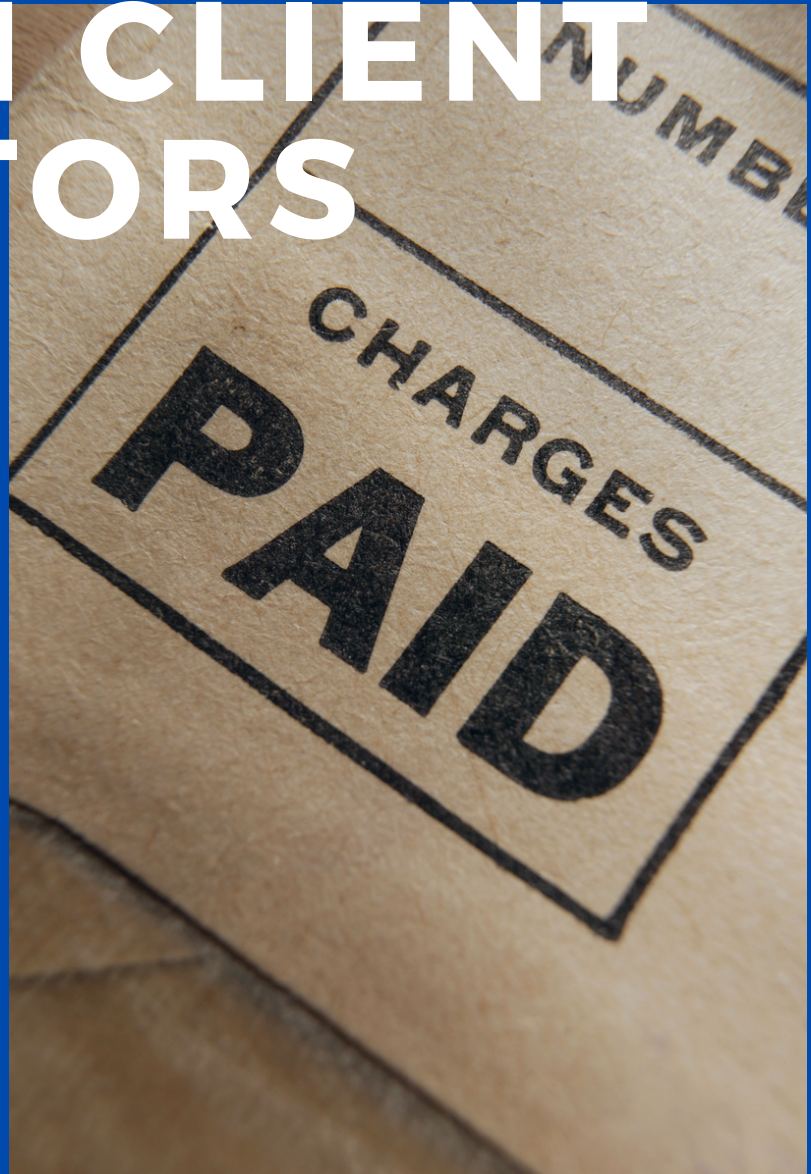


DEALING WITH CLIENT DEBTORS



A GUIDE FOR DEALING WITH
CLIENT DEBTORS

ABI | FEBRUARY 2024 |
WRITTEN BY PETER FARRINGTON & DESIGNED BY
GOVERNING COUNCIL

A CLIENT THAT DOESN'T PAY IS WORSE THAN NO CLIENT AT ALL



ABI members are generally small businesses and often lone, self-employed people offering professional services to a range of clients and to other agents on an 'inter agency or agent-to-agent discount rate. Due to the nature of the client base, ABI members' cash flow is not a concern to the ultimate client which is, more often than not, a law firm. To the ABI member, of course, every payment matters and it may be the case that late payments stifle cash flow to such an extent that the member, in turn, becomes further indebted to suppliers or is unable to meet usual household expenditure. It is a problem.

The following is not intended to represent any form of legal advice but simply to suggest a structured, formal approach to handling debtors to members' businesses and to encourage careful thinking when tackling the thorny issues of outstanding fees.

ACCEPTING INSTRUCTIONS

Think ahead. The instructions might seem very lucrative, exciting and interesting but are you going to be paid and, if so, on time?

Before accepting instructions, it is essential that an ABI member sets out their terms. The payment conditions on an invoice are irrelevant when it comes to enforcing a debt. The crucial element is in the contract' right at the start.

What was agreed? Include in your terms that any queries concerning the service provided and the charges made should be made within xxxxx days of the invoice date. This is to negate 'after the event' disputes.

The member must decide whether to offer payment terms or seek advance payment in full or part. This can be assessed by the level of the fee and associated expenditure. Can you afford to lay out significant sums in costs or to other agents? Can you afford to invest significant time on this matter at the cost of other potential instructions? Recovering money from members of the public is far more difficult than businesses and it is customary to take payment in advance.

CLIENTS THAT DECLINE TERMS

The terms you've laid out might not suit the client and they may decline them or seek to vary them. At this point it will be necessary to revisit the reasons behind your terms. If you concede to the client then you are exposed to the very risk you were attempting to mitigate. If you vary the terms then somewhere along the line the risk remains. Be prepared to walk away from clients if they are unwilling to meet your payment terms.

ISSUING INVOICES

Invoices should be absolutely clear and detail the following:

- A unique number
- The parties – supplier and customer
- The amount due
- The payment terms
- Acceptable methods of payment

REMINDERS

Always send reminders in writing. Attach a copy of the agreed terms and the invoice. Send the reminder as soon as the bill becomes overdue. Do not delay. The reminder should be polite and allow the client room to apologise and blame an 'oversight'.

E.G: REMINDER

The attached invoice is outstanding between us and approaching xxx days old. We will appreciate your prompt payment. However, if you have sent your remittance, please advise of the date and method of payment.

If payment isn't forthcoming within a tolerable amount of time, then a further, firmer reminder should be sent. Consider a telephone call enquiring whether they have received the reminder and if there may be some sort of problem? Make a precise record of that call.

REMINDERS

E.G: SECOND REMINDER

The attached invoice is still outstanding between us and approaching xxx days old. We will appreciate your prompt payment. However, if you have sent your remittance, please advise of the date and method of payment. Please be advised that having exceeded our payment terms we will apply late payment and interest charges if payment is not received by xxxxxxxx

If this is resisted then, on the due date or soon afterwards send the following

THIRD REMINDER

Despite our previous reminders and requests for payment, our invoice number xxxx remains unpaid. We have now added the late payment charges and interest to which we are entitled and attach the amended invoice for your immediate attention.

Should this remain unpaid we will, regrettably, be obliged to commence proceedings to recover this debt from you. We hope this can now be resolved amicably.

Interest and late payment charges can only be added when the invoice is issued between businesses. It does not apply to members of the public.

REMINDERS

To explore the legislation that supports this please see:

Late Payment of Commercial Debts Regulations 2013.

[Click here](#)

Late Payment of Commercial Debts (Interest) Act 1998.

[Click here](#)

To assist you calculate interest.

[Click here](#)

Where payment is not made following the third reminder then send a letter before claim

XYZ Solicitors

Date

Your ref: ABCD

Our ref: 1234

BY POST AND BY EMAIL

Dear Mr Solicitor

Invoice 3769 from Decent Investigators issued to Shoddy Lawyers LLP on 31st August 20XX As it has not been possible to resolve this matter amicably, and it is apparent that court action may be necessary, we write in compliance with the Practice Direction on Pre-Action Conduct. On XXXXXXXX we sent our invoice to XXXXXXXX in the sum of £xxxx. This arose from professional services provided to your firm on the instructions of Mr XXXXX.

Our payment terms are clearly defined as 30 days. Payment was due no later than XXXXXXXX. We have sent polite reminders to Mr XXXXXX by email requesting payment, which were ignored. On XXXXXX we again emailed Mr XXXXXX and informed him that we are exercising our statutory right to claim interest (at 8% over the Bank of England base rate) and compensation for debt recovery costs under the Late Payment legislation, because we were not paid according to our agreed credit terms.

We attached our amended invoice due for immediate payment and advised that, if necessary, we would commence action to recover our debt. Again, we were ignored.

We enclose our latest amended invoice and we look forward to receiving your payment by bacs for the full amount outstanding of £XXXXX by close of business on XXXXXXXX

If we do not receive your payment, we anticipate that court action will be commenced without further reference to you.

Listed below are the documents we intend to rely on in our claim against you:

Invoices

Emails

Witness statement of XXXXXXXX

Witness statement of XXXXXXXX

We confirm that we would be agreeable to mediation and would consider any other system of Alternative Debt Resolution (ADR) in order to avoid the need for this matter to be resolved by the courts.

We invite you to put forward any proposals in this regard.

In closing we draw your attention to paragraphs 15 and 16 of the Practice Direction which gives the courts the power to impose sanctions on the parties if they fail to comply with the direction including failing to respond to this letter before claim.

Yours sincerely

Unhappy ABI Member

WHEN REMINDERS FAIL

Sending three reminders and a letter before claim will sever the relationship between you and your client. This is not, however, a relationship you actually want to have because a) you aren't being paid and b) it is causing extra work for you chasing payments.

You must now decide whether to pursue the matter through the courts or write it off. Most claims will be through the online Small Claims Process.

[Click here](#) to explore the process.

YOU'LL GET PAID WHEN WE GET PAID

This is a common phrase that is offered when ABI members remind clients that bills are overdue. In the legal sector, this is common practice and lawyers have a misconception that their suppliers also operate in this way. When met with this excuse (it will manifest as 'we haven't billed our client yet' sometimes) then point out that there is no contract between you and the client's client and that it is your client that is responsible for paying your fee.

If this deteriorates into an argument then it can be explained to the client that you'd prefer not to resort to seeking a third-party debt order but would be obliged to take that route if the bill remained outstanding.

[Click here](#) for information about third party debt orders

OTHER EXCUSES

Debtors will often offer excuses. They are simply doing this to save face or to delay payment longer. Excuses may include

- It has missed the next payment run so it will go in the next one.
- We don't appear to have your invoice
- We have a new system and are experiencing problems
- XXXX has left the business / been off sick / been on leave.
- I've sent it to be approved and they haven't got back to me yet.
- You're not set up as a supplier.

OTHER EXCUSES

Ignore all of these – they're not true. Simply maintain your position politely and do not alter your initial terms.

Disputing service standards after the event may occur. This should have been dealt with in the contract to ensure such issues are raised at an early stage to transform the matter from a nonpayment / late payment issue to a contractual service level agreement matter which is a wholly different thing. If the matter has not been raised in good time, according to the contract then unless information had only come to light after the time had elapsed, the debt would be pursued regardless albeit, if a genuine service quality issue existed it may be pragmatic to waive the fee.

SOLICITORS THAT REGULARLY FAIL TO PAY OR PAY LATE

The ABI cannot maintain any form of register / blacklist of law firms that present such difficulties to its members.

The SRA is unlikely to become involved in disputes between solicitors and suppliers unless there are other factors involved. Serious dishonesty / malpractice may be present in the circumstances and, if so, copying the SRA into communications might prompt the law firm to settle the outstanding bill.

Information about the SRA is available [here](#).

SOLICITORS THAT REGULARLY FAIL TO PAY OR PAY LATE

Branch meetings and ABI events are good forums to interact with other members and compare experiences.

If a member does encounter a law firm that repeatedly fails to pay on time but still values the level of work then consideration should be given to:

- Writing to the senior partner to set out the difficulties and suggest ways to overcome them.
- Advising the law firm of a credit limit that will not be exceeded. This will stifle its work flow.

Overall, it may simply be better to decline instructions altogether.

OTHER AGENTS

All the same principles but this is particularly concerning.

When other members carry out work for you then they are doing so at a discount rate or offering you geographical coverage / expertise that you haven't got. This enhances your own relationship with the ultimate client and consequently it is your responsibility to **ensure** that the subcontracting agent is paid on time.

OTHER AGENTS

Where other agents fail to pay you (without good reason) then, this experience may be shared privately between members. The ABI will not adjudicate over debt disputes between members. However, the ABI does operate a code of ethics and professional standards ([click here](#)) and in some cases the circumstances leading to the dispute may reveal a breach of those standards and lead to disciplinary action.

The ABI cannot hold non-members or members of other bodies accountable at all and therefore it is advised that wherever possible, sub-contractors are selected from within the ABI membership directory. [Click here](#) to access the directory. Similarly, accepting instructions from non-ABI members presents a greater risk of non-payment because the ABI membership undergoes a greater level of vetting and must conform to a higher standard of compliance. When considering accepting instructions or issuing instructions to non-ABI members then due diligence is called for.

IN SUMMARY

Set out your terms at the outset

If a bill falls overdue – act quickly.

Follow a process to get paid.

Don't be worried about losing a client – there are thousands of others.

Don't fall for excuses.

Help your ABI colleagues.