
2017

DEBT COLLECTION CLAUSES

for Terms & Conditions



Introduction

It is important to ensure that your business is conducting credit control in the most cost-effective way possible. You need to focus on recovering not only the debts you pass to your solicitors but also the maximum amount of legal contribution you can obtain towards your own costs of collection.

Some costs are automatically recoverable under the fixed costs regime, and these will always be claimed for you (as “recoverable costs”). This note aims to help your business obtain a much higher proportion of other costs, whether as in-house administration or credit control, or outsourced through your lawyers.

The following clauses will help you to:

- ~ claim compensation under the Late Payment legislation
- ~ claim other legal and administration costs

Costs cannot be guaranteed as they are always in the discretion of the Court, but hopefully these complimentary clauses achieve your objective of cost-effective debt recovery through legal channels.

Late Payment Interest, Compensation and Reasonable Costs Interest

Interest

Under the Late Payment of Commercial Debts (Interest) Act 1998 you can claim interest at 8% per annum over the base rate at the preceding 31 December or 30 June if:

- ~ You have supplied goods and services
- ~ Your buyer bought for business purposes
- ~ The contract is not a consumer credit agreement

Compensation

In addition, if you are entitled to interest under the 1998 Act, you can claim compensation for unpaid invoices. The compensation you can claim is:

Invoice Amount	Compensation
Up to £999.99	£40 per invoice
£1000 - £9,999.99	£70 per invoice
Over £10,000.00	£100 per invoice

You can claim interest and compensation for late payments whenever a payment is late. You do not need to have started proceedings. So, for example, where a trading relationship ends, there is the potential to go back over 6 years and claim for all late payments over that period!

Note that you cannot increase the compensation payable by artificially splitting invoices.



Late Payment Interest, Compensation and Reasonable Costs Interest

Consumers

If you supply consumers or supply businesses under consumer credit agreements you will need a contractual term as to interest. Please let us know if that would be the case but the sentence at the end of the sample clause should take care of this.

Reasonable costs – orders placed after 15 March 2013

Where orders have been placed after 15 March 2013, if the compensation doesn't cover your costs of recovery, you can claim your reasonable costs. Our view is that the reasonable costs cover your own staff costs etc as well as costs incurred e.g. with lawyers. However our suggested clause below makes this clear.

A full briefing on the Late Payment Act is available on our web site, [click here](#).



Late Payment Interest, Compensation and Reasonable Costs Interest

Sample Interest and Compensation Clause

To enable you to claim under that Act you may wish to use a clause similar to the one set out below:

We reserve the right to claim interest, compensation and reasonable costs under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the term implied by that Act shall apply after any judgment as well as before. Any reference to the Late Payment of Commercial Debts (Interest) Act 1998 is also a reference to any amendment, modification or re-enactment of it. If for any reason the Late Payment of Commercial Debts (Interest) Act 1998 does not apply interest shall be payable on overdue amounts at 8% over the Bank of England Base Rate from time to time.

Costs Under Contract Clause

Sample Costs Under Contract Clause

The clause we suggest to cover collection costs is as follows and covers:

1. Legal fees
2. Commission payable to a debt collection agency
3. Your own administrative costs, normally time spent by your staff, in recovering a debt
4. A minimum contribution towards your legal costs

Without prejudice to our right to claim costs under the Late Payment of Commercial Debts (Interest) Act 1998, if for any reason any payment is not made when due we reserve the right to be paid on an indemnity basis any costs we incur in recovering any money due under this contract (and the costs of recovering such costs) including our administrative costs and any costs incurred with lawyers or debt collection agencies. Our administrative costs may include the cost of employing the staff concerned and the overheads attributable to them for the time spent. In calculating our administrative costs credit will be given for any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998.

Using The Sample Clauses

If you want to use the sample clauses we strongly advise that you send your terms to us so that we can make the amendments. The clauses should be inserted in the same style as the rest of your terms e.g. is your business referred to as “we” or as the “the Company” etc. It is also important to check that the clauses do not conflict with any other terms, for example, an existing interest clause should be deleted.

Fixed Costs

One possibility for clients who have a lot of small claims is to agree fixed charges to cover part or even all of the costs. These would be payable before the action starts either on the letter before action or when instructions to start proceedings are given. The fixed amounts then form part of the claim and may make it easier for a judge to decide they are recoverable.

You could also add this sentence as a robust way of claiming your costs especially in small claims track cases:

If proceedings are issued a minimum contribution of £### (in addition to the fixed costs of issue) will be claimed towards any costs incurred with lawyers

Note:

1. If you add this sentence you need to decide the amount of the contribution. It should be a genuine estimate of your likely average costs. As a guide other clients have usually gone for a figure between £150 - £500.
2. We give an option for client's who rely on the Late Payment Act, to claim an additional fixed sum for costs at issue of £210, £310 or £500, depending on the amount of the claim.
3. If you set the figure too high you may encourage challenges to the costs. If you felt this was a risk in a particular case, you could always claim a lower figure or not claim it at all.
4. This sentence does not prevent you asking the Court to give to you the actual costs at any stage, rather than relying on the fixed contribution (above). If you want to do this, then you must tell us, so we can apply separately to the Court for this.
5. In particular, if in any case you'd prefer to claim your actual costs up to the time of issue, you must tell us before we issue the claim form!
6. Whether you are claiming under a contractual clause or the Late Payment Act, you will be entitled to claim further costs if the case is e.g. defended and you get e.g summary judgment.

Keeping Records

To claim your own administrative costs, you will need to keep good records of the time spent by staff.

You could claim for the time they've spent at their salary rate plus other costs e.g. national insurance. You would also need a calculation of the overheads attributable to them.



Make the Terms Part of Your Contract

As you will appreciate, just changing your terms doesn't automatically make them part of your contracts. Existing contracts will still be on your previous terms and you have to make sure the new terms are properly incorporated into new contracts.

Note: Please let us know when you have included these clauses in your terms so we know you are entitled to costs under contract.

Costs are in the Court's Discretion

Our clause can only improve your negotiating position and, if a case goes to trial, the likelihood of recovering more of your costs. However, we cannot guarantee the court will award you costs, especially in Small Claims Track cases.

Costs are in the court's discretion and some judges are reluctant to award more than the Small Claims Track fixed costs even where there is a contractual clause. The arguments surrounding this topic are surprisingly complex and in some cases it may even be necessary to start a second action for your costs.

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