



## :: Getting Paid on Time – a BAJR Guide ::

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## Introduction.

This guide is a collation of data provided by the Better Payment Practice Campaign (BPPC, aka BPPG) (1) and Business Link (2). In accordance with the wishes of Business Link, text from their website appears unabridged and unchanged in quotation marks. By using a modified version of the Vancouver referencing system the citation numbers have been hyperlinked and will take you to the original source on the web. Due to the legislative nature of the subject paraphrasing and restatement has been kept to a minimum.

*“Making sure customers pay their bills on time can be difficult. It's a serious issue - late or non-payment of debts can cause cashflow problems - and could even force you out of business. To encourage prompt payment, you may charge debtors interest on late payments if you wish. You can also claim reasonable debt-recovery costs. But there's a number of things you can do to persuade customers to pay on time before going down this route - setting out clear terms and conditions and offering discounts for early payment, for example (2).”*

You may also be interested in the BPPG's series of [sample invoice and reminder letters that are freely available](#) (33).

Further questions can be answered by asking the BPPG's Business Doctor at ([http://www.payontime.co.uk/doctor/doctor\\_main.html](http://www.payontime.co.uk/doctor/doctor_main.html)).

## Legal Warning.

*This guide provides general guidance only, it does not constitute legal advice and reliance should not be placed on it. No liability can be accepted by the authors for its contents. The interpretation of the law on late payment is ultimately a matter for the courts, and users should seek their own advice where appropriate. All Business Link material is subject to Crown Copyright.*

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## Setting terms and conditions

“Terms and conditions -sometimes known as terms of trade -are the terms of the contract between you and your customers. They're designed to:

- protect your rights;
- limit your liabilities;
- provide you with some security when you sell your goods or provide a service [\(23\)](#).”

“Many businesses supply goods and services on the basis of informal arrangements, and often disputes arise that could have been avoided if there had been clearly written terms from the start. It's important to get your terms and conditions right. If they're inadequate, it can be difficult to pursue or prevent bad debt. You may want to consult a solicitor when drafting your standard terms. Your terms and conditions should cover:

- price;
- arrangements for delivery;
- payment terms - if you don't agree a credit period with your customers the law sets a default period of 30 days;
- right to charge interest on late payments and claim compensation for debt-recovery costs;
- quality [\(23\)](#).”

**Make your terms binding.** “Make your customer aware of your terms and conditions before providing them with goods or services. If possible, ask them to accept the terms and conditions in writing. Sort out any problems they have before you raise an invoice, and include your terms and conditions on each invoice that you raise. Remember that the law allows you to challenge customers who attempt to impose terms and conditions that remove your rights to claim late payment interest or compensation [\(23\)](#).”

More information on invoicing and payment terms is available from the Business Link website [\(24\)](#).

**We don't have any Terms and Conditions of Sale yet, although this is on our 'to do' list. We simply can't afford the solicitor fees for this at the moment. Are there any standard terms and conditions we can use?** The Institute of Credit Management advises that in regard to standard terms and conditions it is difficult to suggest an 'off the shelf' solution. They advise that you find examples in your industry, construct your own and then get a solicitor to check them. This will cut your legal bill considerably. However, there are some standard points that any set of terms of trade should cover. [The BPPC provides these here \(33\)](#).

**In the event of a dispute as to whether the supplier's or the customer's terms of trade are relevant to a contract, who is right?** It is important that you seek legal advice on this issue. A precedent known as 'Battle of the Forms' states that the terms which apply to a contract are those which are agreed by the parties at the moment in time when agreement to sell and to buy is reached. It is therefore important to establish the chronology of which terms were presented last [\(33\)](#).

## Credit checking potential customers

“When you're about to secure a deal, it can be tempting to skip vetting the customer beforehand. However, extending credit in this way can leave you exposed to the risk of not being paid. Conducting credit checks on new and existing customers can greatly reduce your vulnerability. It's a good idea to ask every new customer to complete a credit application (or trading application) form. This should include:

- full name of the customer's business and whether it trades under a different name;
- registration number if it's a limited company;
- how much credit is being asked for;
- full contact details for the person responsible for payment queries;
- delivery and invoice address if different;
- bank and bank account details;
- at least two trade references;
- request for consent to obtain bank and credit references;
- details of who owns - and who runs - the business (25).”

**How to credit check your customers.** “The key ways of checking a customer's credit worthiness include:

- checking bank references;
- checking your customer's payment record with some of their other suppliers - make sure that you, not your customer, choose which ones to approach in order to get an independent view;
- paying for an online credit rating from a credit reference agency;
- looking at an existing customer's payment history;
- getting feedback from your sales team and others who have contact with the customer;
- checking a limited company's accounts at Companies House;
- searching the Register of Judgments Orders and Fines - held at Registry Trust Ltd;
- checking with the Insolvency Service;
- checking local newspapers (25).”

“The BPPC has more information on carrying out credit checks. [Read a guide to credit checking at the BPPC website](#). The AiB (Accountant in Bankruptcy) is responsible for liquidation and receivership in Scotland - [find guidance on liquidation and receivership at the AiB website](#). Businesses in Northern Ireland can [read about insolvency at the Department of Enterprise, Trade and Investment website](#) (25).”

## Reducing late payment risks

“There are a number of steps you can take to encourage customers to pay you promptly. These will boost your cashflow and reduce the potential for bad debts (26).”

“For example, if you think a customer may be a high risk, you may want to use part payment - asking them for an advance before supplying goods or services. You then give them your normal credit terms on the balance. Or you could offer customers a discount for paying within the credit period. Always send your invoice to a named individual and set out invoices logically. See the Business Link guide on [invoicing and payment terms](#) (26).”

“Alternatively, you could arrange for funds to be held with a third party, such as a bank, until the job is complete. This approach is used particularly for contract work. A stakeholder fund, for example, gives the contractor access to working funds while providing the client with some security over quality. The contract terms might be "one-third payment on contract, balance on satisfactory completion". The stakeholder bank will only release the balance on the written instructions of the purchaser or an agreed arbitrator (26).”

“Other methods of reducing your late payment risk include using:

- Third-party guarantees - a legally binding agreement by a third party that they will pay if your customer does not.
- Retention of title - allowing you to retain ownership of goods supplied until they are paid for.
- Contra and offset deals - where the buyer pays you in part or full with their products.
- Credit insurance - covering you if you have a bad debt because your customer goes into insolvency.
- Factoring - where a third party (often part of a bank) gives you an advance on a proportion of your invoice and collects the debt from your customer. See the Business Link guide on [debt factoring and invoice discounting: the basics](#).
- Invoice discounting - a similar system to debt factoring, where a third party pays you an advance on your invoices, but you do all the debt collection and credit control.
- Systems to automatically record phone conversations and written communications.
- Automated payment systems, such as BACS or CHAPS - these will provide payment certainty and prevent the risks associated with bounced, missing or lost cheques. Also, transactions made using BACS cost significantly less to process than cheque payments. [Find out about BACSTEL-IP on the BACSTEL-IP website](#).
- Legal expenses insurance - this covers the costs of recovering debts through the courts (26).”

## Factoring and invoice discounting

“Factoring and invoice discounting can boost cashflow by raising finance against outstanding invoices. You will typically be able to borrow 80-85 per cent of the value of the invoice. Companies of all sizes, including start-ups, can use the service. However, it is generally considered most appropriate and cost effective for companies anticipating a high growth in turnover (27).”

“Factoring companies -known as factors -chase debts for you and pay you a fixed proportion of invoices within a pre-arranged time and the balance of the invoice - minus their charges -once a customer pays up (27).”

“With invoice discounting you are responsible for chasing the debt but can raise an advance on an invoice. As there is less work involved for the invoice discount company, charges are usually lower (27).”

### Advantages.

- “You can maximise your cashflow - raising up to 85 per cent on outstanding invoices.
- Factoring reduces the time and money spent on credit control.
- The factor's credit control system will help assess the creditworthiness of new and existing clients.
- Factoring often protects you against bad debts.
- Factoring can reduce the cost and risk of doing business overseas.
- If you don't want to pay for a collection service you can use invoice discounting (27).”

### Disadvantages.

- “The factor usually takes over your sales ledger - some customers may prefer to deal with you personally.
- Factoring may impose constraints on the way you do business. Factors may want to pre-approve your customers, which could cause delays.
- When you want to terminate the agreement you will have to pay back the money that has been advanced to you against the invoices - requiring you to look at alternative forms of finance.
- Some invoice and factoring companies tie you into long termination notice periods - usually three months. Some companies require one year's notice, which could be costly for you (27).”

For more information see the Business Link guide on [debt factoring and invoice discounting: the basics](#).

## Late payment legislation

The UK was one of the first countries in the EU to implement late payment legislation in order to promote a culture of prompt payment. This legislation was introduced in three phases the last phase coming into force on 7 August 2002. The phrase “late payment legislation” refers to the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002. The statutory right to claim interest and the other entitlements are not compulsory and it is down to the supplier to decide whether or not to use the available rights (3).

From 7 August 2002 public sector bodies and all businesses, regardless of size can claim statutory interest for the late payment of commercial debts. They can also claim “reasonable debt recovery costs.

**Jurisdiction.** This guide refers to late payment legislation in England and Wales from 7 August 2002 onwards (6). In Scotland and Northern Ireland, late payment legislation is very similar but due to differences in legal proceedings and devolution it is essential that businesses and the public sector seek advice in these territories to seek appropriate national guidance from either (7):

- **Northern Ireland**

The Register of Companies, 64 Chichester St, Belfast, BT1 4JX

- **Scotland**

Business Environment and Consumer Affairs Branch, Enterprise and Industry Division, Scottish Executive Enterprise and Lifelong Learning Department, 4<sup>th</sup> Floor, Meridian Court, 5 Cadogan St, Glasgow, G2 6AT

All the rights discussed here should be available throughout the European Union from 7 August 2002, but there may be differences in how these rights are provided. For example, when claiming interest for late payment countries within the Euro zone will use the European Central Bank base rate to which they will probably add 7% uplift (9).

Businesses involved in commercial contracts with businesses and/or public sector bodies not domiciled in the UK should make sure they know what their rights are under the late payment legislation of the jurisdiction to which the contract would be subject if a dispute arose. Any commercial contract made under the law of another member of the EU will have access to entitlements resulting from late payment legislation, which will be similar to those in the UK (9).

**What type of firms can I apply the late payment legislation to?** Any business - sole proprietor, partnership or limited liability company. However you cannot apply the late payment legislation to personal debt (33).

**Debts from business agreed before 7 August 2002.** Prior to 7 August 2002 all small businesses (defined as 50 or less employees) can use the rights conferred by the Late Payment of Commercial Debts (Interest) Act 1998 (4) to claim interest retrospectively. Section 3 of this, ‘Do I have to claim immediately?’ provides further guidance about claiming retrospectively. A guide to claiming interest on pre-7 August 2002 debt is available (5). From 1 November 1998 these small businesses could claim statutory interest for late payment from large businesses and most of the public sector. From 1 November 200 they could also claim statutory interest for late payment from other small businesses (6).

**Definitions.** A **public sector body** is any Government Department, Government Agency, Non-Departmental Public Body, and local or public authority. A **representative body** is organisation established to represent the collective interests of small and medium-sized enterprises, either in general or in a particular sector or geographic area. A small and medium-sized enterprise (SME) is defined as having less than 250 employees and having either a turnover of less than EUR 40m or an annual balance sheet total not exceeding EUR 27m and is independent (7) (full definition of SME is given in Section 6 of the 2002 guide (8)). (Guidance: to convert your turnover or annual balance sheet figures into a EURO equivalent use the reference rate published annually by the European Commission, which can be found in the *Official Journal of the European Communities*.)

**Is legislation the only answer to late payment?** No. You can make your own arrangements to remedy late payment. This is called contractual interest. However, if you have made your own contractual interest arrangements the late payment legislation will not apply. If no arrangements have been made the late payment legislation can be applied (9).

To safeguard against purchasers abusing their right to agree their own arrangements as described above, any remedy for late payment must be “substantial,” if not it will be void and the debtor will be unable to rely on it. In this case the contractual interest arrangement will be struck down by the courts and the late payment legislation will then apply to the contract. Any contract terms are void if they-

- (a) confer a contractual right to interest that is not substantial remedy for late payment of debt, or
- (b) vary the right to statutory interest to provide a right to statutory interest that is not a substantial remedy for late payment of debt, unless the overall remedy for late payment of the debt is a substantial remedy (9).

**But what is substantial?** To determine if a remedy is substantial or not, the courts consider all the circumstances, including the rate of interest that applies to late payments and the length of credit periods. Purchasers should not try to negotiate longer credit periods to avoid paying late. When a credit period is considered excessive by the court, it will be struck down and replaced with the default 30 day period in the late payment legislation (10).

The supplier must show that a remedy is insubstantial, likewise a purchaser may have to provide evidence that a remedy is fair and reasonable in the circumstances. The court will then decide whether, given the circumstances (which include what is usual for that sector), the remedy meets the criteria of a “substantial remedy” shown above. Factors taken into account by the court will include whether both parties had an equal bargaining position and whether standard terms have been imposed (10).

Examples of contract terms that a court might declare void on grounds of being no substantial remedy include (11):

- a credit period significantly different from customary practice in that industry;
- a credit period significantly different from other supply contracts operated by the purchaser;
- an interest rate on late payment that is significantly lower than the statutory rate which is no deterrent as it is lower than the purchaser’s theoretical or actual cost of agreed borrowing;

- an interest rate on late payment that is significantly lower than the statutory rate which is no compensation as it is lower than the supplier's theoretical or actual cost of agreed borrowing;
- an interest rate on late payment that is significantly lower than the rate used in other supply contracts operated by the purchaser or than what is normal in that sector of the economy;
- a contract term that has the effect of reducing the amount of interest that can be claimed, the compensation for late payment then becomes insufficient to act as deterrent or recompense;
- excessive information requirements that must be fulfilled under the contract before any credit period begins.

The list above is not exhaustive and might not be applicable to every case. It would be relevant whether the purchaser had given any benefit in return for the period in question. But, it should be noted that the courts will look at the issue of substantial remedy for late payment on a case-by-case basis.

### **What does late payment legislation provide?**

From 7 August 2002 all businesses and the public sector can now be entitled to four things:

- (1) the right to claim interest for late payment;
- (2) the right to claim reasonable debt recovery costs, unless the supplier has acted unreasonably;
- (3) the right to challenge contractual terms that do not provide a substantial remedy against late payment; and
- (4) the right for "representative bodies" to challenge contractual terms that are grossly unfair on behalf of small and medium-sized enterprises ([12](#)).

**Late payment and customer relations.** Many people think that they risk antagonising their customers by using the legislation. It should be borne in mind that using the legislation is a statutory right and is simply a deterrent to late payment. By making the legislation a central part of payment terms, customers will become aware that this is the way you do business (and also that it is "the law") ([12](#)).

**Can I charge individuals statutory late payment interest?** No, the legislation only applies to business to business transactions ([32](#)).

### **What wording should I use on invoices to display my intention to charge interest if I am paid late?**

You need to add the following wording:

We understand and will exercise our statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms.

You should also consider signing up to the Better Payment Practice Code. This means you can put a logo on your invoices that indicate that you pay (and expect to be paid) promptly.

[Follow this link for more details \(33\)](#).

### **When can I claim late payment interest and reasonable debt recovery costs?**

You can claim as soon as a payment is late. But remember, if your contract makes provision for late payment interest, the statutory right to interest and the right to reasonable debt recovery costs will not apply. You can contract for reasonable recovery costs to cover the event of late payment or if you are litigating you may be

able to recover some of your costs and losses from late payment through the court ([12](#)).

**What is late?** After the last day of an agreed credit period, or when the supplier has agreed a credit period with the purchaser in writing or verbally. If no credit period has been agreed then the default period is 30 days. This default 30 days is not a statutory credit period, if no credit period is agreed in a contract then the principal debt is due from the moment goods are delivered or service performed ([12](#)).

Normally the 30 day default period begins from whichever of these two actions happens last:

- (1) the delivery of goods or performance of the service; or
- (2) the day when the purchaser has notice of the amount of debt.

Once the agreed credit period or default period has expired the payment is late ([13](#)).

**Contracts requiring payment in advance.** Sometimes a contract can require payment(s) to be made before the goods or service are delivered or performed. The legislation does not give a right to interest unless at least some of the goods have been delivered or part of the service performed, unless contractually agreed otherwise. If the parties wish to make other agreements, they will need to make provision in the contract for a substantial remedy instead of statutory interest ([13](#)).

Some contracts specify that the whole contract price be paid before any goods or service are received. If payment has not been made before delivery of goods or performance of service, statutory interest starts to run from the day after the day on which all the goods were delivered or the whole service is completed ([13](#)).

Sometimes contracts call for payment to be made in instalments related to parts of goods delivered or service performed. When these instalments are late statutory interest runs from the day after the day when that part of the goods were delivered or that part of the service was performed ([13](#)).

Where an advance payment forms part of the contract price, but is unrelated to the delivery of part of the goods or performance of part of the service, statutory interest runs from the day after the day when all the goods were delivered or the whole service completed ([13](#)).

**No agreed credit period, purchaser usually pays at the end of next month.**

There is often a long-standing relationship between some parties where there is no agreed credit period but the purchaser usually pays at the end of the month after the month when the invoice was received. In these cases, the credit period ends on the last day of the month following the month in which the invoice was received. Interest starts to run on the next day ([13](#)).

**When (1) purchasers are dealing with new suppliers; or (2) where there is any reason to doubt that payment arrangements can be regarded as established practice between supplier and purchaser.** The purchaser should make sure there is an agreed credit period if not the default 30 days might apply ([14](#)).

**How to claim for interest and/or reasonable debt recovery costs.** When a payment is late, the supplier should inform the purchaser that they are claiming interest under the late payment legislation. It is helpful, but not necessary, to indicate what the daily rate of interest will be. The amount of compensation for debt recovery costs is determined by a table which the supplier can refer to. Notification of a claim for interest and/or compensation for debt recovery costs can be oral, but it is

preferable to put it in writing as this makes it easier to prove that notice was given. Provide all the information that would be on a standard invoice (14):

- amount owed, it is helpful to show the total amount of interest owed at the date of the invoice for interest, and if the principal has not yet been paid, the rate at which the interest will continue (the best way to do this is probably to show a breakdown of principal debt, debt recovery costs and interest so far);
- what the amount owed is for, the principal debt it relates to, the original invoice number;
- to whom payment should be made;
- by what date;
- your address;
- how payment should be made.

**How should I inform people they will be charged interest and/or reasonable debt recovery costs if they pay late?** The late payment legislation is intended to be a deterrent and not a last resort. When a supplier reminds purchasers that payment is due within a certain period, they should at the same time point out that interest and compensation for debt recovery costs will be charged on overdue invoices under the late payment legislation. As well as informing purchasers verbally of their intention to exercise their right to charge interest and claim compensation, suppliers should state the same clearly wherever possible on all written communications (14), such as:

‘We understand and will exercise our statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms (15).’

**If a business is consistently paying late for the service we provide them, can we start to charge interest even though we did not agree that we would at the start of doing business with them?** You do not need to have notified your customer at the start of your relationship with them of your intention to charge late payment interest and you do not have to refer to it in your contract. However, it is advised but not obligatory that you amend your terms and conditions and make reference to your statutory right to interest in future contracts, as this may deter late payment (32).

**Do I have to charge all late payers interest and/or debt recovery costs?** No, the late payment legislation is not compulsory, you are free to decide whether to make a claim or not and whether to claim interest and/or debt recovery costs (15).

## Void (grossly unfair) contractual terms

**What are void (grossly unfair) contractual terms?** Void (grossly unfair) contractual terms undermine the late payment legislation. They may try to deny the supplier their right to reasonable compensation and/or remove or reduce the right to statutory interest on late payment. For guidance: see 'How you do business' in Section 1 of the 2002 User's Guide ([15](#)).

**How can I challenge grossly unfair contractual terms?** Any business or the public sector can go to court to challenge grossly unfair terms and conditions. For guidance: see 'How you do business' in Section 1 of the 2002 User's Guide ([15](#)). Small and medium-sized enterprises (SMEs) can ask a representative body to go to court on their behalf. Representative bodies which are officially recognised as representing SMEs or having a legitimate interest in representing SMEs may go to court on behalf of SME(s) to challenge grossly unfair contractual terms. If they are successful the Court will strike down as void the offending term or terms and the late payment legislation will apply instead. For guidance: see 'How you do business' in Section 1 of the 2002 User's Guide ([15](#)).

**Funding for court action.** There is no specific funding available for challenging grossly unfair contractual terms in court. Any representative bodies going to court are subject to normal costs rules and legislation liabilities. For guidance: see 'How you do business' in Section 1 of the 2002 User's Guide ([15](#)).

**Can an independent representative body challenge void (grossly unfair) commercial contract terms and conditions without being requested to by an SME?** Yes. Permitted that the representative body has a relevant and demonstrable link with the SME/s, and has been founded specifically to act on the interests of SMEs either as a whole or in a particular sector or geographical area. For guidance: see 'How you do business' in Section 1 of the 2002 User's Guide ([15](#)).

**I don't have a contract with my customer. Can I still claim late payment interest and compensation?** It is possible to claim interest on overdue invoices even if you haven't agreed a formal contract. However, the key thing about credit terms is to agree them up front before trading with any other business, to help you get paid more quickly and avoid misunderstandings. Credit periods should be made clear to the customer, ideally well before invoicing stage ([33](#)).

## How to claim debt recovery cost compensation and late payment interest

**Do I have to claim immediately?** The older a debt the less likely it will be paid. However, a claim for interest does not have to be made immediately. In England, Wales and Northern Ireland a supplier has six years to make their claim, and five years in Scotland. The six year limitation period is derived from case law and the Limitation Act 1980. The receivers or liquidators of a business may pursue its purchasers for interest on late payment during this period. Businesses are also entitled to claim interest after they have stopped supplying a purchaser. Purchasers wishing to avoid future claims for interest should simply pay on time ([16](#)).

Therefore, there is a reasonable expectation that it would be possible to pursue and claim statutory interest up to 6 years (5 years in Scotland) retrospectively, or back to the time when the appropriate legislation came into force, whichever is shorter. Businesses not based in England or Wales should read 'Jurisdiction' in Section 1 of the 2002 User's Guide. Limitation, not being able to claim retrospectively will only arise in 2004 in England and Wales as claims cannot pre-date the relevant part of the legislation coming into force, in this case 1998 ([16](#)). See table 1 below.

Earliest date from which a commercial contract can create a claim under the late payment legislation.	Who can claim?	What?	From?
From 1 November 1998	Small businesses	Interest	Large businesses. Most of public sector.
From 1 November 2000	Small businesses	Interest	Small businesses and above.
From 7 August 2002	Anyone in a commercial contract	Interest Compensation	All the above.

**Table 1.** After 2002 User's Guide, page 15 ([16](#)).

### How much compensation can I claim for a late payment?

Size of debt	Compensation to be paid
Up to £999.99	£40
£1000 to £9,999.99	£70
£10,000 and over	£100

**Table 2.** After 2002 User's Guide, page 17 ([17](#)).

**Do I charge compensation each time I chase the outstanding debt?** No, compensation is only charged once per outstanding debt ([32](#)).

### If a debt was incurred prior to the 7th August 2002 can I claim compensation?

No, the compensation can only be claimed for contracts dated on or after 7th August 2002 ([32](#)).

**How do I calculate late payment interest?** At the start of the first six months of the year and last six months of the year the official dealing rate or base rate of the Bank of England will be used as a fixed reference rate for the next six months. This divides the year into 1<sup>st</sup> January to 30<sup>th</sup> June (using the rate on the 31<sup>st</sup> December) and 1<sup>st</sup> July to 31<sup>st</sup> December (using the rate on the 30<sup>th</sup> June). Your interest rate is

determined by adding 8% to the reference rate for the six-month period in which your debt became late. So if the interest rate was 5% at the time 5% plus 8% would be 13%. The correct interest rate can be found on the BPPG website ([31](#)), the BPPG also issue a press release with the new base rate when it is introduced. The correct rate can also be found in the financial pages of the national press or on the Bank of England website ([18](#)).

**The calculation.** Interest on late payment is simple, not compound. Here's how it is calculated ([18](#)):

Debt x interest rate x number of days late / 365 = interest owed

**VAT.** Interest is charged on the gross amount of debt including any VAT, but you do not pay VAT on the interest ([18](#)). Calculate the amount of interest by adding debt + VAT but do not add VAT onto the interest itself ([32](#)).

**Example.** The base rate is 4% for the six-month period when the debt became late, therefore the statutory interest rate is 12% (4% base rate plus 8%).

Debt is £851.06,  
plus £148.94 VAT,  
= £1000 total.

If this debt is 30 days late, the interest owing is:  
£1000 x 12% = £120  
£120 / 365 = 32.9p  
32.9p x 30 = £9.86 interest owed after 30 days.

**If I am claiming interest on a debt that spans one year and there has been four changes to the base rate in that period, what base rate do I use, is it a combination of all four or just one, i.e. the base rate when the debt started to accrue?** For contracts dated 7th August 2002 and onwards, businesses are entitled to charge 8% above the reference rate that is in place on the day the debt becomes over due. There is no need to adjust your interest rate if base rate moves - you use the one in place when the debt becomes overdue. However, it should be noted that if the contract predates 7th August 2002, interest is charged at 8% above the BoE base rate that was in place on the day the payment became overdue. This also means that if the contract predates 7th August 2002, then there is no right to compensation under the late payment legislation either. The easiest way to do the calculation may be via the [online calculator which is located here](#) ([33](#)).

**When does interest stop running?** Interest stops running once the principal has been paid, paid means received but not cleared (so it would stop running on the day a cheque arrived, not the day a cheque cleared). When the principal and interest are owed, unless payment is accepted on other terms, any part payment of the debt would go towards reducing the amount of interest first ([17](#)).

**How do I deal with collecting late payment interest when the invoice has been partially settled?** In legal terms, interest continues at the daily rate on the whole of the outstanding debt ([32](#)).

**What if a customer has more than one overdue invoice? How do I claim these multiple debts?** If each invoice relates to a separate order for goods or services, then you are entitled to claim compensation on each overdue invoice. If they are invoices raised to chase the same debt, then you can only claim one amount of compensation ([33](#)).

It is possible to add together several claims for compensation and late payment interest in one claim. If you do this, you should calculate each individually and set them out in writing so it is clear which claim relates to which order. You should not issue an invoice for the interest and compensation - you put your claim in writing. If your claim for interest remains unpaid, then you need to write again, to chase, explaining that interest is continuing to accrue. The BPPC has template letters you can use for this, [click here \(33\)](#).

## How to collect

### **How do I collect debt recovery compensation and/or late payment interest?**

Debt recovery compensation is claimed alongside late payment interest. Both of these are payable by law. It is the suppliers decision whether to enforce this legal right. It is considered good business practice to agree payment terms “up-front”, and preferably in writing. This includes agreeing what interest and compensation will be provided or indicating that you will rely on the statutory rights, you are referred to the question-before-last in Part 1, Section 2 of the BPPG guide. If payment is late, you should make a written demand for the interest and/or compensation ([19](#)).

**Guidance:** Entitlement to compensation for debt recovery costs does not affect your other rights, you may still go to court to recover specific fees and charges paid to specialist firms or advisers if you feel this is necessary. When going to court statutory compensation can be recovered along with late payment interest ([19](#)).

### **A customer is not paying me and is saying that I am harassing him for the payment. What shall I do?**

Section 40 of the Administration of Justice Act 1970 governs the issue of harassing a debtor, it is an offence to harass a debtor. Harassment is described as contacting the debtor in a manner or frequency which is unreasonable. It is difficult to define what is unreasonable and a court may be asked to decide this. As a guideline, if calls are made too often or at unreasonable times of day (generally considered to be before 8am or after 9pm), that would be harassment. If a debtor asks a creditor not to telephone, it is possible that continuing to do so might constitute harassment ([33](#)).

### **How do I record late payment interest and compensation in my accounting records for tax purposes?**

Late payment interest is entered as ‘interest received’ and compensation as ‘other income’([33](#)).

**A customer is refusing to pay. What should I do?** If a customer ‘refuses’ to pay, it is important to establish why, rather than immediately seeking to sue. It could be the case that they are disputing the payment, in which case the onus is on you to resolve the dispute. You should write to whomever the commercial contract is with to acknowledge the outstanding payment. The BPPC supply a [template letter](#) that can be adapted to suit your situation ([33](#)).

If the customer ignores your letter (which you should chase up with a phone call), has not disputed your invoice, and has no justifiable reason for withholding payment, then you could appoint a third party to pursue the debt on your behalf. You can also consider recovering the debt through the County Court. If you opt to go through the County Court and the debtor ignores the claim, you should think about applying for a judgment, see the [Court Service website](#) for information in the situation ([33](#)).

If a judgment is obtained, it may be necessary to take some enforcement action. Such action may include an application for an order to obtain information from a judgment debtor, a third party debt order, or instructing the Court Bailiff or the Sheriff. An order to obtain information from a judgment debtor brings the debtor before the Court to be examined under Oath, by the Court. A third party debt order is a way of obtaining money that is owed to you. If the debtor has money in a bank account, or a building society, the bank or building society can be ordered to pay the money over ([33](#)).

**What do I do when a customer disputes an invoice and won't pay it?** A disputed invoice is one that the customer has queried, or refuses to pay all or part of for a given reason. On the occasions when a customer queries one of your invoices, it is vital to ensure that you have a method in place to acknowledge, investigate and reply to that query quickly, so that delay in the payment of the outstanding invoice is avoided. Whatever the reason for the query, the onus is firmly upon your organisation to resolve the problem - fast. Otherwise the customer will feel perfectly justified in withholding payment of all or part of the relevant amount until your system gets itself sufficiently organised to respond to the point ([33](#)).

Assuming that the query or complaint does not relate to the entire balance due, you should remind your customer that there is still a balance owing to your organisation which is not in any way connected with the queries raised. This reminder should be personally addressed to the person raising the query and should set out your account number, an order number, and remind your customer of the balance due. The effect of this letter is twofold: It gives the customer a sense of receiving an additional prompt, efficient service and at the same time it gives little or no leeway for delay or non-payment of balances that are properly due ([33](#)).

As far as your internal procedures are concerned, it is important to communicate the status of unsatisfied customers to other relevant internal departments. All relevant parties should be furnished with full details of the customer, their account number, the relevant credit limit, the current balance due, the date the query was received and details as to its exact nature. The information should also include the deadline by which a response must be given to the customer. With that information in place, you will be in a position to reply to the customer's query or complaint either by negotiating some form of discount or allowance on the invoice delivered, or by delivering a letter to the customer in response to their query. This letter should quote the relevant account number and the balance due and set out your company's version of events in a way that is designed to deal conclusively with the query raised ([33](#)).

**One of my business customers is going into liquidation. How do I collect what I'm owed?**

Contact the receivers immediately. When a company goes into administration then receivers are appointed. It is their responsibility to distribute any funds to creditors, if there are any left. You should ensure your claim is lodged. Once you get in touch with them, request a Proof of Debt Form. The receiver may well be aware of the debt and you may likely receive a letter and form from the receiver in due course anyway. Unfortunately, if the debtor is insolvent you are unlikely to recover your money. If the debtor can only repay a portion of the total debts owed, then a pro-rata distribution would be made. You may want to visit the [insolvency service website for help](#) ([33](#)).

**Can my right to interest or compensation for debt recovery costs be sold or transferred to other parties such as factors or collection agencies?** Yes. Should any part of the debt, interest and/or principal be assigned to a third party, the original supplier should inform the owing purchaser in writing to tell them who the debt has been assigned to. The third party, regardless of its size, can then pursue the debtor through the courts ([19](#)).

If a supplier sells a debt without notifying the debtor, the transfer is upheld regarding the original supplier and the third party, but where the debtor is concerned they are still in debt to the original supplier. In this case only the original supplier can pursue the debtor through the courts ([19](#)).

Whoever is entitled to receive the money can employ an agent to collect it for them without actually transferring the debt. Similarly, a factor can expect a supplier to act as its agent by continuing to press debtors to pay debts they have sold on to the factor. Someone acting as an agent in this way can calculate and claim interest and invoice for it. Some agencies can offer a legal service which allows them to issue court proceedings (20).

A supplier can transfer the whole debt, or only part of it (just the principal, or just the interest). When only part of the debt has been transferred, the supplier can act as an agent for the third party for the transferred part, and the third party can act for the supplier for the untransferred part (20).

Whatever the arrangements between the supplier and third party the purchaser can never be required to pay interest twice on the same debt (20).

**Using a debt collection agency.** “If your customers are ignoring your reminders you may have to take further action. Sometimes using a debt collection agency to collect your debt can be very effective. However, before you reach this stage, you should always attempt to discuss the situation with your customer. Try to reach an agreement and always let your customer know, in writing, before you start any legal proceedings. If you do have to resort to using a debt collection agency, you need to weigh up a number of advantages and disadvantages (28).”

**Does the right to compensation mean I can pass on the cost of my debt collector to my late paying customer?** No, businesses can claim interest and compensation for debt recovery costs, this does not mean you can pass on all the costs of the third party collector (32).

#### **Advantages.**

- “Debt collection agencies and solicitors specialising in debt collection have the time, expertise and resources needed for the job.
- Using a reputable debt collection agency is often a fast method of recovering debts. It will usually save you time.
- If the debt collection agency is polite and professional, you may retain the customer - assuming you want to. This is unlikely to be the case if you take legal action.
- The agency can instruct solicitors on your behalf if the customer still refuses to pay (28).”

#### **Disadvantages.**

- “Cost - the commission on the money recovered is typically 8 to 10 per cent for commercial debts.
- You may lose the customer, and if the agency is heavy-handed in its dealings, your reputation may be damaged.
- Rip-offs can and do happen. [Check that the agency is registered with the Credit Services Association \(CSA\) on the CSA website \(28\).](#)”

**What if someone does not agree with the interest or compensation for debt recovery costs that they are charged with?** For whatever reason (such as faulty goods, goods delivered late) a purchaser may not agree with a late payment charge. In this situation the purchaser can negotiate with the supplier for a reduction or amendment of the charge. If no agreement can be reached in these negotiations and all collection methods and negotiations are exhausted the supplier can if they consider their claim a proper one consider the following options (20):

- Going to court for the interest and/or compensation for debt recovery costs;
- Withholding further goods or services until the interest is paid;
- Refusal to trade on credit terms with the purchaser in future;
- Negotiate with the purchaser to ensure that future invoices are paid on time.

**Should I sue for late payment interest?** It is important to note that you do not need to go to court to claim late payment interest and debt recovery costs. You have a statutory right to both and these should be paid with the principal sum by the debtor. It may not be necessary at this stage to threaten your debtor with Court action, as the reality of an interest charge and compensation bill may be enough to prompt your debtor into responding to your calls and hopefully paying your invoice. It is advisable that you think carefully before deciding to pursue the debt through the court and that you avoid issuing threats that you do not intend to act upon. The BPPC recommend that you have a look at the guidance provided on the [Court Service website](#) to help you decide whether court action would be appropriate if payment is still not forthcoming after the debtor receives notification of the interest and compensation due. Another source of help you could turn to for advice on taking the debtor to court is the 'Lawyers for Business' scheme, which will offer you contact details of a solicitor who can provide 30 minutes free legal advice ([33](#)). Their number is 020 7405 9075.

**Should I take court action?** "Taking legal action to recover your money should be a last resort. Consider all other alternatives before going to court, including:

- writing a letter stating that you are going to make a county court claim;
- getting your solicitor to write a letter chasing the debt;
- issuing a statutory demand for debts of more than £750 - if payment isn't made within 21 days you can ask a court to wind up the debtor company;
- alternative dispute resolution techniques ([29](#)).

[Use the Business Link interactive tool to find out how you can recover unpaid debts.](#)

"If court action still seems the best solution, consider whether making a claim is cost-effective. It might be cheaper to write off small sums. And if a customer is likely to make large orders in future, it may be better to let things lie if a relatively minor amount is in dispute ([29](#))."

"If court action still seems the best solution, make sure you've resolved any disputes over the goods or services you've provided. If you don't do this, the debt will be difficult to recover. You also need to make sure the customer has the means to settle. If they're bankrupt or in liquidation, your debt is probably irrecoverable ([29](#))."

**How do I use the courts to collect payment?** When interest and/or compensation for debt recovery costs go unpaid the claim can be pursued through the courts. Taking someone to court can be an effective method of debt recovery, but is not always the best option, as for example, if your debtor is insolvent, the chances of recovering the debt are minimal but you will still incur court costs. Court procedures are designed to be quick and easy to operate. County Court offices can provide information about court procedures, the relevant forms and assistance with filling them in. Addresses and contact details of County Courts are listed in the telephone directory under 'Courts' ([20](#)).

A supplier should, as best practice, give notice to a debtor of the intention to issue proceedings to recover the interest and/or compensation for late payment. When legal proceedings are entered, the purchaser may set out the grounds of his dispute to contest the claim, the court will then have to decide the matter ([21](#)).

A recent introduction from the Court Service is 'Money Claim Online', which allows debts of less than £100,000 to be claimed on the internet. More information can be found at ([www.moneyclaim.gov.uk/](http://www.moneyclaim.gov.uk/)). "In Northern Ireland, you can use an online service for making a claim through the Small Claims Court. [Find out what services are available online from the NI Court Service website \(registration required\) \(29\)](#)."

**Debts of up to £5,000.** "Debts of up to £5,000 are dealt with by the small claims track at your local county court. [Find your local county court on the HM Courts Service \(HMCS\) website](#). This offers a quick and inexpensive way of making claims for unpaid debts, as you don't have to employ a solicitor. In Scotland, claims are dealt with by the Sheriff's court. [Find information on how to make a claim in Scotland on the Adviceguide website](#). The maximum amount differs in Northern Ireland (29)."

**Debts over £5,000.** "Claims from £5,000 to £15,000 must be issued in a county court, while claims of more than £15,000 can be issued in the High Court. It's advisable to get legal advice about this. See the Business Link guide on how to [choose and manage a solicitor \(29\)](#)."

**Guidance:** Court proceedings or Money Claim Online should only be a last resort. Before resorting to these be sure that you have tried all other solutions, including alternative dispute resolution, where appropriate, the Court Service offers guidance on this. The court expects both parties to act reasonably in the exchange of information and documents relevant to the claim before litigation is launched and in generally trying to avoid the necessity of starting proceedings (21).

**How will a County Court Judgement (CCJ) affect the purchaser?** If the court awards against the purchaser, they may find their credit rating is detrimentally affected if they do not make the payment within one month, as this non-payment will be registered with Registry Trust Ltd (the register of CCJs). This information will be available to credit reference agencies and any other party who wishes to search the registry (21).

**Are there valid grounds on which to dispute interest and/or compensation for debt recovery costs?** The purchaser can ask the court to be excused from paying some or all of the interest and/or debt recovery costs. This can be done in defence to a claim made by the supplier or by applying to the court themselves. Examples of how this could happen include the supplier not giving the purchaser enough information about the amount owed, where payment should be sent, how payment should be made, or other unreasonable conduct. The court has the power to partially or wholly remit interest (21).

**How can I protect my right to claim interest and/or compensation for debt recovery costs? (22)**

- Suppliers should carry evaluate in advance the purchaser's financial status to minimise their risk of providing goods or services that a company cannot or will not pay for.
- Suppliers should promptly send accurate invoices and statements of account.
- Suppliers should ensure that genuine customer complaints and disputes are resolved as early as possible and should act reasonably at all times.
- Suppliers should have an effective collection system to ensure compliance with agreed terms.

**Template letters** for use in dealing with customers who do not pay on time are [available here](#) from the BPPC. They take you through all the stages of chasing payment right from the setting up of the account through to legal action ([33](#)).

## Receiving and avoiding claims for interest and compensation for debt recovery costs

**What should I do if I receive a claim for interest and/or compensation for debt recovery costs?** If the payment was late then interest and compensation are due and payable under the late payment legislation. The supplier has a legal right to the interest and compensation, and is entitled to seek enforcement for non-payment through the courts if necessary. If any interest and/or compensation are legally due and have been claimed, they should be paid to avoid litigation. If there is a genuine dispute, or the charge appears to be incorrect, the claim should be queried immediately ([22](#)).

**How can I make sure I don't receive a claim for interest and/or compensation for debt recovery costs?** ([22](#))

- Purchasers should not enter into a contract they cannot realistically fulfil.
- Purchasers should ensure that they comply with the agreed terms.
- Purchasers should promptly settle invoices and statements of account.
- Purchasers should raise any genuine complaints or disputes as soon as they arise, at the very latest upon receipt of an invoice.
- Should a dispute or complaint arise, purchasers should obtain, where possible, written confirmation from the supplier that a query exists.

**Can purchasers and suppliers work together to promote better payment?** Good communication between supplier and purchaser can help reduce late payment. Purchasers and suppliers should ensure that payment terms are agreed at the start of the relationship and are clear to all parties ([22](#)).

## Appendix 1: Dealing with common excuses

The BPPC offer counters for some of the more common excuses for not paying invoices on time ([30](#)):

**“The director who signs the cheques is away.”**

A common excuse during summer and around bank holidays, frequently used as a delaying tactic. Arguments such as these can be reversed to secure payments. If the director is on holiday, find out what provisions are in place for signing salary cheques and paying utility bills. Normally, signed cheques will have been left to settle important accounts, you can pressure the person you are speaking with to write one of these cheques out for you by making them feel they will be going against their director’s wishes by withholding payment.

**“The network/computer is down.”**

Find out how often these problems occur and how long faults usually last. If the problem is genuine the debtor should be willing to send a manual cheque, refusal is generally a sign of trying to avoid payment.

**“The cheque is in the post.”**

Ask for cheque and postage details, if they have not sent payment they will find it difficult to answer your questions.

**“We are awaiting payment of a large account and can’t pay you until this comes in.”**

Ask for the name and address of their debtor and the expected date of payment. The company should be able to arrange some form of credit with their bank on the security of the debt. Suggest they take this option and find out how quickly they can do this.

**“We can’t find your invoice.”**

Ask if this is the only reason for late payment and offer to fax a copy immediately. If they do not agree to pay straight away, it is likely that their requesting a copy was a delaying tactic.

## Appendix 2: Definition of small and medium-sized enterprises

This appendix, which also appears on pages 22-3 of the BPPG guide, is an extract from the Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996: 4).

1. Small and medium-sized enterprises, hereinafter referred to as 'SMEs', are defined as enterprises which:
  - have fewer than 250 employees, and have either:
  - an annual turnover not exceeding EUR 40 million; or
  - an annual balance-sheet total not exceeding EUR 27 million.
  - conform to the criterion of independence as defined in paragraph 3.
2. Where it is necessary to distinguish between small and medium-sized enterprises, the 'small enterprise' is defined as an enterprise which:
  - has fewer than 50 employees and has either:
  - an annual turnover not exceeding EUR 70 million; or
  - an annual balance-sheet total not exceeding EUR 5 million,
  - conforms to the criterion of independence as defined in paragraph 3.
3. Independent enterprises are those which are not owned as to 25% or more of the capital or the voting rights by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply. This threshold may be exceeded in the following two cases:
  - if the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly,
  - if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25% or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.
4. In calculating the thresholds referred to in paragraphs 1 and 2, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises that it directly or indirectly controls through possession of 25% or more of the capital or of the voting rights.
5. Where it is necessary to distinguish micro-enterprises from other SMEs, these are defined as enterprises having fewer than 10 employees.
6. Where, at the final balance sheet date, an enterprise exceeds or falls below the employee thresholds or financial ceilings, this is to result in its acquiring or losing the status of 'SME', 'medium-sized enterprise', 'small enterprise' or 'micro-enterprise' only if the phenomenon is repeated over two consecutive financial years.
7. The number of persons employed corresponds to the number of annual working units (AWU), that is to say, the number of full-time workers employed during one year with part-time and seasonal workers being fractions of AWU. The reference year to be considered is that of the last approved accounting period.
8. The turnover and balance sheet total thresholds are those of the last approved 12-month accounting period. In the case of newly-established enterprises whose accounts have not yet been approved, the thresholds to apply shall be derived from a reliable estimate made in the course of the financial year.

## Contacts and further information

Business Link provide advice and support to small businesses. For more information about the range of their services call 0845 600 9 006 or visit ([www.businesslink.org](http://www.businesslink.org)).

Free copies of *A User's Guide to late payment legislation: The Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002* and other publications by Business Link can be ordered from:

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E-mail: [sbspubs@eclogistics.co.uk](mailto:sbspubs@eclogistics.co.uk)

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