

Time for change

Late payment and commercial disputes
2019 survey results





Time for change

More needs to be done to help SMEs resolve late payments and other commercial disputes

The issue of late payments and other unresolved commercial disputes has been building momentum over the past 12 months or so, with leading industry bodies launching campaigns to draw attention to the issue and the Government unveiling plans to improve the culture around payment practices.

In our view, successfully tackling the problem requires a cultural shift by large businesses, and a renewed focus in this area will start to change attitudes at leadership level - which will begin to drive better behaviour over time.

However, it is unlikely to be enough by itself. Ensuring that SMEs have quicker and more cost-effective access to the legal system will be vital if all of the promising work done so far is to have real bite. Accountants and lawyers have an important role to play there.

This survey, as part of which we engaged hundreds of SMEs in conjunction with our nationwide network of partner firms, highlights the true impact of commercial disputes and late payments on SMEs across the UK.

Although the tide is starting to turn, the results show that the current system remains broken: issues are widespread and are hampering the prospects of SMEs. More needs to be done.

This is where Escalate comes in. We will continue to support businesses to recover the money they are owed through bad debts and other commercial disputes.

Our mission is to give businesses better access to justice and help them recover the billions that are written off each year. We are already making a difference; please get in touch if we can help your business.

Chris

Chris Clay
Escalate Director



The results

We surveyed SMEs from a range of disciplines across the country, to find out the issues that they currently face when it comes to late payment and commercial disputes.

How pervasive is the problem?

In total, 96% of respondents regularly experience bad debt or other commercial disputes, confirming that these are widespread issues for SMEs.



Almost seven in 10 of those surveyed are affected by late payments from clients beyond their agreed terms of business. Half are frequently made to wait at least 60 days for payment, which has a significant impact on their businesses.



Almost **7/10** are affected by late payments from clients beyond their agreed terms of business.

There is little evidence to suggest that the situation is improving – less than 5% of respondents told us that instances of late payment and other commercial disputes have declined over the past five years. In fact, it appears that the problems are getting worse, with 41% of survey participants witnessing an increase in late payment episodes and other commercial disputes.



What are the most common types of disputes?

Not surprisingly, given the responses we received, businesses cite non-payment as the most common type of dispute, with 57% having experienced at least one instance in the past 12 months.

Breaches of contract are another serious issue, with more than one in five SMEs reporting one or more cases recently.

12% of respondents have experienced an employment issue and 6% reported at least one property-related dispute.

The top three most common types of dispute



Can't pay or won't pay?

It appears that late payments are the result of a combination of clients being unable and unwilling to pay their suppliers.

In total, 29% of respondents told us that they thought that their late payment issues were the result of businesses being unable to pay them, while a similar number (22%) reported that their problems stemmed from client unwillingness to pay. A further 16% thought that the issue was split 50/50 between these two causes.

Reasons for late payment



How serious is the problem?

60% percent of respondents told us that the late payments they experience are a serious issue for them. Over four in 10 believe that late payments put their business' future at risk.



This chimes with recent research by the Federation of Small Business, which revealed that 50,000 SMEs close each year as a result of delayed payments from their clients.

What is the impact?

The survey results make it clear that businesses are forced to make painful decisions as a result of being paid late. These decisions can undermine the long term prospects of the affected SMEs and can also often have a human cost.

When faced with late payment by their clients, more than four in 10 see no option but to pay their own suppliers late, leading to a snowball effect further down the supply chain and reinforcing the culture of late payment.

Business expansion plans are also often hampered by late payments, with 42% stating that they are made to delay investment as a result of late payments and 12% holding back on hiring staff. 42% of respondents told us that they are forced to use their overdraft to cover the cashflow shortfall from late payments and disputes.

The impact of late payments



It is particularly concerning to see the impact of commercial disputes on SME's staff, with 32% of business owners paying themselves or their fellow directors late and 3% delaying payment to employees. 5% also cite the frustrations and stress caused by disputes as a major issue.

Do businesses take legal action?

Despite the persistent and serious issues outlined above, only 23% of respondents have taken legal action to try to resolve their late payments and other commercial disputes.



Of the remainder, 36% have threatened clients with action or seriously considered taking the legal route, and 30% did not even entertain the idea of getting lawyers involved.

Methods of persuasion used by businesses to chase up payment



The most frequent reasons given for not pursuing legal action were the cost, time and hassle of the process, as well as concerns about losing the client's business. This is broadly in line with the results of a study by the Legal Services Board in 2018, which found that only a small minority of SMEs will instruct a lawyer if they are faced with a dispute, with a lack of trust and cost cited as the reasons for low engagement.

These studies reinforce the view that the traditional dispute resolution process is broken and that more needs to be done to help SMEs with the bumps in the road that they will inevitably experience.

What else do businesses do?

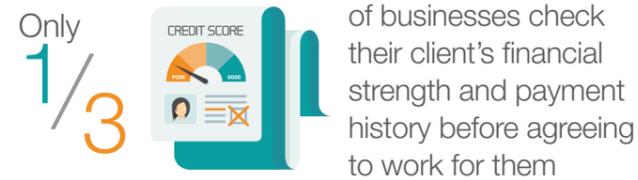
Businesses that are reluctant to take legal action appear to have little option but to chase clients to tackle bad debt and commercial disputes.

80% are forced to spend time and effort persuading clients to pay up, often resorting to threats to make their point: 44%

threaten to withhold the service until payment is made, 36% threaten to undertake legal action, 27% threaten to charge interest and 19% threaten to terminate the contact.

They undertake this time-consuming task despite recognising it is likely to be only moderately successful, with respondents giving it only a six out of 10 rating for effectiveness.

Only one in three businesses check their client's financial strength and payment history before agreeing to work for them.



Credit insurance and factoring/invoice discounting are each used by just 6% of respondents.

Why don't SMEs pursue legal action?
What the respondents from our survey said.

- Legal action is difficult to justify, as it would certainly take longer to receive payment overall.
- They paid the outstanding debt but deducted the court costs.
- They paid in the end by their rules not mine.
- It can be too time consuming and cost prohibitive.
- Too expensive to instruct lawyers.
- Didn't really know how to go about it without developing a bad reputation.
- Not worth it, done so before, just end up paying court fees and bailiffs.
- How do I take legal action against the Government?



So, what should you do?

There are no easy answers, but there are a number of steps that businesses can take to minimise the impact of late payments and other disputes:

- 1. Do your research**
 Get to know your client and invest some time in due diligence, whether that involves asking for references, undertaking a credit check or reviewing the client's accounts.
- 2. Make your terms clear**
 Agree expectations from the start. Many disputes arise from the fact that the parties involved did not take time to discuss their expectations at the start of the process. Clearly state your payment terms and other important points up front and avoid leaving any room for doubt later on.
- 3. Document as much as possible**
 Having a paper trail of important decisions can act as a reminder of the agreements made, providing evidence to bring both sides back on track. Comprehensive paperwork is also likely to help in a court case.
- 4. Address issues early**
 The old adage that 'a stitch in time saves nine' applies here. A potentially tricky conversation early on can prevent a problem from growing in a complex legal case that will cost everyone time and money.
- 5. Understand the background**
 Talk to the client to better understand the reasons for the issue. Building a relationship with the client may also provide them with an added incentive to prioritise your concerns.
- 6. Be firm but fair**
 Your business is important to you, so nobody expects you to give in at the first sign of a disagreement. But don't let your emotions cloud your judgements. Don't make things personal. Step back and use an impartial observer, if needed.
- 7. Get an expert involved**
 If you feel that the other party is unlikely to change its mind, it may be time for expert advice. This is exactly why we created Escalate. If you have already suffered financial losses, don't automatically assume the costs of recovery outweigh the benefits.

What next?
 While there has undoubtedly been progress in the area of late payments and commercial disputes, the results of this survey make it clear that there is considerable work still to do. All of the Escalate partner firms are committed to playing their role in resolving the issue. We are already making a difference; please get in touch if we can help your business.

Who are Escalate?

Escalate is a multi award-winning process that is transforming how SMEs tackle commercial disputes.

Pursuing a commercial dispute can be a costly, lengthy and risky undertaking. Independent research, as well as this survey, identified widespread SME dissatisfaction with the traditional litigation process.

Escalate has broken down the barriers that prevented SMEs from gaining access to justice and unlocked a significant new market for dispute resolution and commercial litigation. This is evidenced by the considerable interest that we have seen in Escalate. We are already helping to unlock £50 million of cash for businesses in a variety of disputes and have reviewed 300+ cases to date.

Our Partners



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