

# Managing cash flow

The legal team behind the Law-call service, available to Alliance members, explains how you can deal with unpaid fees

**R**unning any early years setting is a vocation, with the heart often leading the head. But an increasing worry for many providers is cash flow – the non-payment of fees is near the top of the list of concerns we are often asked about. Unpaid fees are always a difficult topic. It is not uncommon for us to hear that a parent has inadvertently been able to rack up a large bill, as their setting has been naturally reluctant to turn the child away.

Government guidelines on dealing with debt have recently been updated. From 1 October onwards, a detailed procedure must be followed before any court action can start. Debtors must now be given up to 74 days to negotiate any demand for payment of fees. As such, it is more important than ever to tackle this problem head on.

In our experience, not many early years providers have a written process or procedure in place for debt management. In the light of the recent changes, now would be a good time to create one or review any that you do have.

We recommend that you set a financial limit for any debts. After this point, your goodwill will have expired and you should set up a plan of action for the next steps. The argument for recovering the outstanding fees as a breach of contract should be expressed from the outset in your communication with the parents.

Any legal action must be taken against the person who entered into the contract – whoever it was that signed the agreement with your setting. If you do not currently issue any contracts, you should start doing so as

soon as possible. Include clear terms on fees, a notice period and any interest you will add. Remember that a contract can also be verbal.

The new pre-action protocol for debt claims requires settings to take the following steps:

1. First, send a Letter of Claim in the post giving the debtor 30 days to reply. The letter must be posted on the day it is dated or on the following day.
2. The Letter of Claim must refer to the amount of debt and any interest, the details of the contract and, to avoid any potential delays, should include a copy of the contract. If the debtor has already made a payment, explain why this is no longer acceptable. You should also include details on how the debt can be paid.
3. Enclose an up-to-date statement of account for the debt – it must be less than six months old. Also include a copy of the Information Sheet and the Reply Form, which are published by the government, and a Financial Statement form to enable the debtor to declare their financial situation.

The full code and forms can be found on the [justice.gov.uk](http://justice.gov.uk) website.

If a debtor does not reply within 30 days, then a further 14 days written warning must be given before you start any court action. If they reply and say they are seeking debt advice, or that they need more evidence, or if they return the

paperwork, even if it is not complete – then another 30 days notice must be given.

If your setting comes to an arrangement for repayment that later falls through, the process should start again, although you won't have to resend all the earlier documentation. For persistent offenders, there will come a point when you have to decide whether to keep resetting this process.

Once a decision has been made to go to court, you can start the process using the Money Claim Online Service found on the government's website at [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk). You'll have to pay court fees, but they are set in line with the amount you are owed and can be recovered as part of the debt.

The claim should be made in the names of the setting owner or manager – whether it's a director or an officer of the committee. A member of the management team must attend the court to present the case at a hearing. The hearing will be held in chambers – an informal setting with the judge in a suit, rather than robes.

## MORE INFORMATION

If you have any questions about unpaid fees, or any other legal queries relating to your setting or childminding business, please get in touch with Law-call using their 24 hour helpline. Contact details can be found on your membership card – or you can call the Alliance's Information Service team on **020 7697 2595** with your membership number to get Law-call's details.