



Overdue Cash Retentions

It is estimated that NSCC members have on average £50,000 withheld in overdue cash retentions which has an adverse impact on cash flow and may even threaten their survival.

NSCC has launched a No Retention Policy which aims to eliminate cash retentions in the construction industry. Retentions are an out-dated practice and Specialist Contractors are encouraged to resist the withholding of retentions using the guidance and tools provided by NSCC. However, if you do have retention withheld on a project, there are a number of steps you can take to secure the release of your cash.

Don't forget, it is your money and you are entitled to it – do not give up!

1. Give advance notice to the contractor

A month before your retention is due, send the **'Retention Reminder'** letter to the contractor as a reminder that it will shortly be due for payment. You should also make sure you notify the contractor in writing that you have achieved Practical Completion if your contract requires you to do so.

2. Chase payment

If you have not received your retention by the date that it is due, send the **'Overdue Retention'** letter to the contractor requesting its immediate release. Send a copy of your letter to NSCC to assist NSCC in building up a picture of which contractors unfairly withhold retention from their supply chains.

If there is no agreed release date for your retention in your contract and you don't know for certain when it is due, chasing it is slightly more difficult but it is still worth writing to the contractor in the first instance.

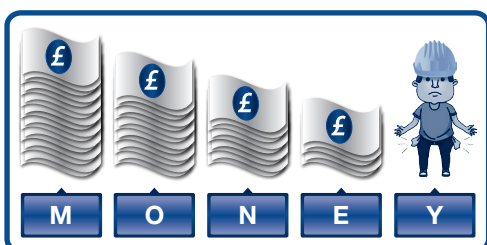
3. Contact the project client

Depending on the response from the contractor, you may wish to contact the project client or his contract administrator (e.g. architect or quantity surveyor) to find out if the Certificate of Making Good Defects has been issued and the retention released to the contractor. Don't confuse the Certificate of Making Good Defects with the Final Certificate; the Final Certificate is a completely different document and you do not need to wait for it to be issued in order to have your retention released.

4. Make a nuisance of yourself

If you do not get a response from the contractor or payment of your retention is not forthcoming, write formally to the project client to tell him that you haven't been paid your retention.

Continue to write to the contractor every month, claiming interest on the outstanding sum you believe is overdue. Remember, it is the squeaky wheel that gets the grease!



5. Consider using adjudication

If the contractor doesn't reply or refuses to pay the outstanding sum, it is likely you have a 'dispute' which can be referred to adjudication. In order to embark upon adjudication, the dispute must have 'crystallised' which means you have failed to reach agreement on one or more of the following:

- The date, or event, upon which retention is to be paid to you
- Whether that event has occurred
- Whether you have made good the defects under the sub-contract
- Whether the contractor is adequately progressing the making good of his own defects
- Whether, in circumstances where the contractor is in dispute with the client that there are defects in the main contract works, the contractor is actively pursuing his rights under the main contract to have that dispute decided.

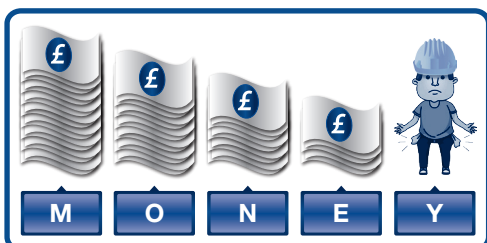
NSCC members can nominate an adjudicator for free using the Association of Independent Construction Adjudicators (AICA) provided that their contract does not name another adjudicator or ANB.

For further information, call 0844 249 5353 or visit www.aica-adjudication.co.uk.

Don't forget...

If you cannot strike out the cash retention clause in a contract, it is essential to secure the release of your cash by writing a calendar date into the contract.

NSCC members have access to a free legal and contractual helpline for queries on retentions, which is provided in England and Wales by Wedlake Bell on **0844 249 9871**. For contracts in Scotland, the helpline is provided by Anderson Strathern on **0844 249 9872**.



www.no-retention.co.uk

Retention Reminder – Template Letter

[Click here to download letter](#)

Insert address of contractor

Insert date

Dear *insert name of contractor*

Release of Retention – *Insert name of project*

As agreed in our contract dated *insert date of contract* for the above project, the retention held against our works to the sum of *insert amount of retention* is due for release on *insert date agreed in contract*.

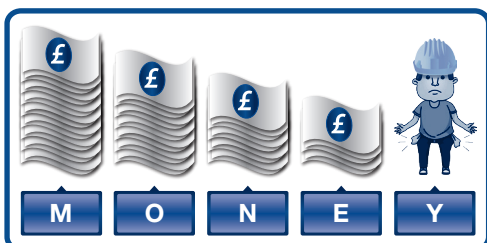
We would be grateful if you could arrange for payment of our retention to be made on this date.

If you have any queries regarding our retention, please do not hesitate to contact us, otherwise we will look forward to receiving payment on *insert date agreed in contract*.

Yours sincerely

Insert signature

Insert name



Overdue Retention – Template Letter

[Click here to
download letter](#)

Insert address of contractor

Insert date

Dear *insert name of contractor*

Overdue Retention – *insert name of project*

Our retention on the above project amounting to *insert amount of retention* was due for release in accordance with our contract dated *insert date of contract* on *insert date agreed in contract*; however, we note from our records that payment remains outstanding.

We would be grateful if you could confirm that payment of *insert amount of retention* will be made by return.

Should we not receive payment within 7 days of the date of this letter, we reserve the right to take appropriate action to recover the debt without further reference to you.

If you have any queries regarding this matter, please do not hesitate to contact us.

Yours sincerely

Insert signature

Insert name

cc. NSCC
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