



OUTSTANDING FEES

From time to time Members have reported their concerns regarding cash flow, the non payment of fees and the difficulties encountered in seeking recovery of those fees.

There is a pattern forming through the claims environment which is becoming all too familiar. A firm pressing for the payment of its fees discovers that the non-payment is due to a concern that the client has about the architect's performance and in serious cases this has led to a claim being made against them.

Some clients are using the "set off" provision they believe is available to them in common law to avoid the paying of fees on the grounds that they have suffered a loss even though the alleged loss has been unsubstantiated or on many occasions not even addressed through a dispute resolution process.

While in some cases there may be substance in the claim against the architect there is a feeling that the large majority of the claims are spurious and are an excuse to avoid paying the fee.

Suggested additional clauses in an Architect's Agreement for Services that directly address the issue of non-payment or late payment of professional fees, and which may be worthy of consideration, are set out as follows:

- Default interest on overdue amounts (already included)
- Entitlement to claim the costs of recovering overdue fees
- Better clarity in the ownership of copyright or of the licence to use the documents so that in the event of the fee not being paid the use of the documents is denied and indeed perhaps even distrained from the building site.
- A clear contract provision that will allow the architect to stop work in the event of delayed payment.
- A clause in the contract which prohibits "set off" of fees against alleged damages.

Another provision worthy of consideration is that where the terms of engagement call for quality assurance procedures to be in place, include a procedure which immediately follows "sign off" by the client to require the payment of the fee to

that stage of the work before the architect commences the next phase of the commission.

All of this of course isn't much help if proper internal monitoring and management of the cash flow is not carried out with the practice.

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