

# Dealing with parents who do not pay

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## **Definition**

'Breach of contract basically means that one or more of the Terms and Conditions laid out in a contract has been broken' - <http://www.contractsandagreements.co.uk/breach-of-contract.html>

If you have a contract with parents that says 'you must pay me £xx for childcare by xx date each week / month' and parents have signed it then they have to pay that money or they will have breached your contract.

Similarly, if your Terms and Conditions say, 'if parents do not pay me full fees by the date agreed I reserve the right to terminate the contract immediately' and parents have signed it, then if they don't pay you can follow your T & Cs.

## Late payment

There is a difference between non-paying parents and parents who pay late.

Parents who pay late are a nuisance because they might make your bank account to go into arrears and you will be wondering every month if the fees will appear. There are some ways you can help parents to pay on time...

- **Contract** – make sure your contract states exactly how long you will be prepared to work if you have not been paid. Make sure this period is short and covered by the deposit you take;
- **Deposit** - always take a deposit so that you have a 'buffer' amount in your bank to use if payments are late arriving. I have discussed deposits in more detail later;
- **Fees policy** - be absolutely clear about your fees from the start of the contract. Give parents a copy of your policy (you can find a sample policy for free and gold members on the [Childcare.co.uk](http://Childcare.co.uk) website), offer to talk it through with them, write it in plain English... some childminders find it helpful to run their policies by more experienced childminders first to make sure they read absolutely right;
- **Fees schedule** – write a summary schedule for every family. Include information about exactly when you expect to be paid / not paid, what should be paid in advance and on what dates. Ask parents to pay in advance so you are only invoicing small amounts such as agreed extras eg outings money and overtime at the end of the month;
- **Penalties for late payment** - you might include a financial penalty for unpaid fees. It must be a reasonable amount for a defined length of time eg '£5 per day for 5 working days' or '£4 per day for 5 calendar days';
- **Stagger payments** - discuss late payments at the start of the contract and see if parents would prefer to pay, for example, weekly rather than monthly in advance;
- **Money up front** - always explain to parents that you want to be paid in advance. As long as you hold a deposit you will never get into a muddle because the deposit will cover any late payments and you will be able to terminate quickly if necessary before more than the deposit is owed;
- **Invoice parents** - provide a written bill every week / month reminding parents of the amount owed and the due date. I find that handing parents a paper bill each month usually focuses them;
- **Payment directly into the bank** - provide your bank details so that parents can set up a standing order to pay the usual months' fees in advance, leaving you to just bill for extras or overtime;
- **Cheques** - are not a good option if you want to be paid on time. They take a long time to clear and they can be stopped or might bounce if parents do not have fees in their account to cover the amount written on the cheque. **Note** – do not accept an undated cheque as payment in advance as it might be cancelled. You should ask for either a cheque which can be cashed and kept in your bank account until the end of the contract period, direct payment into your bank account or cash up front before the contract starts.

- **Protect yourself with your notice period** - state on your contracts that your notice period in case of non payment is xx days. This might be as short a period as 5 calendar days (beware saying 'working days' if the child is part time because this could go on for a while before you can take action). A late payment letter should be given to parents on the day payment is due and remains unpaid, so that the notice period can start immediately. Bear in mind when setting your notice period that Royal Sun Alliance (who underwrite insurance for PLA, Pacey and others) will not take on a non payment case on your behalf if the arrears are less than £150 / Morton Michel will not take on a case on your behalf if the arrears are less than £100.

If parents are continually late paying you, ask them in for a meeting and discuss changes the contract, such as changing the contract terms to payment in advance, weekly payments in advance or asking for cash up front in your hand every Monday before starting work for the week.

### **'It's not our fault!' say parents**

Sometimes, parents will tell you that they have no control over late payments such as if voucher companies withhold money or if it takes a while at the start of the contract to set up tax credits. You are a business person! You cannot afford late or non-payments - and parents must respect this. You are not paid by voucher companies or tax credits - you are not signing a contract with them. It is parents who must pay your deposit and fees up front and if they start to argue about this at the beginning of the contract big alarm bells should be ringing in your head.

Remember - there is nothing more annoying than a parent arriving sporting a new hairdo or booking an expensive foreign holiday and then telling you they cannot afford to pay you! You need to make sure your Terms and Conditions are professional and business like so there are no misunderstandings.

### **Taking a deposit**

A deposit is - the parent and childminder decide when a place is available / required and the parent pays a one-off payment to hold the place open OR the place is taken immediately and the parent pays a deposit to be retained until the end of the contracted period. Occasionally a deposit is taken and is repaid to the parent in lieu of the first month's fees **but** this does not give you money in your bank in case something goes wrong with the contract so is not recommended. When a deposit is taken and retained, it can be used in case of non-payment or to cover fees for the last month of the contract.

Be aware that if the terms of the contract change during the time the child is with you... for example, you are asked to work more or less days... the amount of deposit you hold might need raising or lowering. For example, you might have a deposit for 2 days a week and the contract changes to 4 days a week. You will need to take more deposit from parents to cover yourself in case of non payment.

If you agree with parents to keep the deposit for the length of the contract, you must write it down carefully and both sign. You must also ensure you have the funds at the end of the placement to repay it in full. If you do not do this, you will be breaking the law and parents will be within their rights to take you to court to reclaim their money.

## **Non-payment**

If parents do not pay you for work you have done - or in advance if that is what is stated in your contract - you are entitled to take action against them. For example, you might have it written into your Terms and Conditions that you reserve the right to terminate the contract with immediate effect but as we all know, this is easier said than done when children are involved!

Most childminders charge late fees first - a polite letter on the day payment is due and does not arrive asking parents to pay now please and reminding them that they will be charged late fees of £xx per day and that you will terminate their contract after xx days is often enough to remind them that they have forgotten to pay you!

Refer to your contract and Terms and Conditions to check what you said when parents first signed with you. If you don't have this in writing, signed by parents, you are not on secure legal ground and should contact your insurance company for urgent advice.

## **OVERDUE ACCOUNT**

Date -

Dear xx

Please note that from today's date, a balance of £ \_\_\_\_\_ remains on your childcare account.

Please settle this bill within 5 calendar days in cash or bank payment for the full amount. Please note that from ..... no further childcare services will be available until your account is settled in full and I reserve the right to take legal advice to recover the debt.

When the amount is settled, I would like to arrange a meeting to discuss future fees. Please speak to me to agree a mutually convenient time and date.

Best regards,

**Note** - avoid sending text messages or communicating with parents about money issues on social media sites such as Facebook as this is not professional. Either use letters (get proof of postage) or speak to parents face to face and write down what has been agreed for signing by both parties.

## **What to do if you are still not paid**

If you have given parents your 'overdue fees' letter, waited however long you have agreed on your contract and you have still not received your money, it is time to terminate the contract. First, however, it is always best to contact your insurance company and ask their advice.

If you are insured by **Morton Michel** you do not need to use their branded contracts for any claims against non-paying parents over £100 in value to be valid. If you are a free or gold member of Childcare.co.uk you will find sample contracts in your member area which you can use or adapt.

If parents do not pay you, you are entitled to suspend care of the child until the amount due has been paid and / or the contract is terminated. Assuming the parent pays, you can then make a decision whether to continue caring for the child or not.

If the contract is terminated or the parent takes the child out of your care and does not pay or you terminate for non-payment and there is money owing, the Morton Michel legal helpline will advise you what to do next.

Morton Michel insurance supports 'contract disputes of over £100, if a parent breaks with your contract term and the recovery of a debt of over £100, if a parent fails to pay for your services.' See your policy document for more information.

If your insurance is underwritten by **Royal Sun Alliance** you should contact them for their latest policy document which will give you details about what to do if parents do not pay.

For example, Pacey (via the legal helpline) will offer 'guidance' to childminders who are owed less than £150 by non-paying parents and further support if the amount owed is in excess of £150. Guidance and support will be given based on the individual circumstances of the claim.

**Meet parents** - where possible (assuming they haven't disappeared on you), ask for an urgent face-to-face meeting with parents to discuss why you have not been paid – you are entitled to a reason. Also discuss whether parents have any concerns about their child's care in your home – I know from talking to childminders that there is a link between non payment of fees and false (malicious) Ofsted complaints so you need to act as professionally as possible. Take notes during the meeting and write them up for parents to sign.

Listen to what parents are prepared to do to clear the debt and make sure you are happy with the terms. Write the agreement for both you and the parents to sign and keep a copy safe. State what will happen if parents default on the agreement.

## **What if parents offer to pay some of the outstanding amount?**

For example, parents might panic about not having childcare and offer you half the fees, with a promise of the rest later in the month, if you take the child back. You need to consider their offer carefully and I would suggest that you ring your insurance company and take advice before proceeding, so you are clear about your legal position.

You would then write up the agreement you have made and keep a copy, complete with parents' signature. Make sure you get the signature of both parents if appropriate, including (especially) the parent who normally pays you...

- When will the remainder be paid... exactly?
- What happens if the promised money does not arrive?
- What happens if parents pay by cheque and it bounces? I know a lot of childminders who do not accept cheques for this reason... plus of course it might take up to 5 days for the cheque to clear and you are waiting even longer for your money;
- What exactly you will do to reclaim the remainder of the money. This is especially important if the amount paid then takes the debt to under £100 (for Morton Michel) or £150 (for Pacey) because the remainder of the debt would not be insured;
- Will you follow through with excluding the child next time?

You also need to consider the affect of this uncertainty might affect the child.

You might then need to think about changing the wording of your fees policy, parent-childminder contract and Terms and Conditions for future families to tighten them up and make sure this situation does not happen again.

## **Excluding a child**

This is a big step and should not be taken lightly. The parents are likely to be angry with you for making this kind of decision and the child might hear things being said about you that they might find distressing. Also the child might not understand why s/he is not allowed to come to your home any more and may feel rejected. Child psychologists state that this might lead to insecurity and attachment issues in later life.

If you do take the decision to exclude the child you need to be very clear (in your own head and in writing with the parents) about what you will do if the debt is paid. You might ask yourself...

- Will you take the child back?
- Will you change the terms of the contract to payment in advance or direct bank payment by BACS?
- What will you do if the situation happens again?
- How much deposit do you need to hold to stop this happening in the future?
- Is your documentation robust enough? Are you protecting yourself?