Your route through Retention Claim

A sample report, built from invented answers, to show what yours will look like.

> This report is based only on your answers, before we have seen any of your papers. It is not legal advice, and you should not rely on any date or time limit in it: check every date against your subcontract. Legal questions go to your solicitor.

Where you stand

Some of this retention may have fallen due more than 5 years ago. The time limit for each release runs from the date it fell due, and it is longer if your subcontract was signed as a deed. The oldest may be close to it, and your solicitor confirms the exact date for each job.

Your answers suggest you asked for a release in a payment application after its trigger happened, and no valid notice answered it. If your application went in on time and the right way, the release may be part of the sum due. Holding it back would then usually need a valid Pay Less Notice, whatever reason is given.

Your answers suggest the event your subcontract names has happened, and the only reason given is the employer's own release. Many subcontracts tie each release to your own works and never mention the employer. If yours is one of them, that reason may not hold your money at all.

An employer condition only holds if your subcontract sets it out, in terms the law allows. The Housing Grants, Construction and Regeneration Act 1996 limits making your payment depend on what happens under another contract. Whether your clause is caught depends on its exact words, and that is a question for your solicitor.

Your answers suggest you hold the subcontracts, the release events have happened and the payment paperwork survives. That is a strong position: the evidence is there, so each release can go straight on to be valued and pursued.

What to do now

In order: the first ones cannot wait.

1. **Take the oldest jobs to your solicitor this week** (today)

   Why: Once a release is out of time, it may not be recoverable at all. A letter asking for payment does not, on its own, stop the clock.

   How: List every job that finished more than 5 years ago, with the retention held and when each release fell due, as far as you know. Say whether each subcontract was signed as a deed. Ask your solicitor to confirm the last date for each release, and the step that protects it. Send the same list to us and we date every release from the paperwork, and flag any that are close in writing that day.

2. **Check the notices before you argue about the reason**

   Why: If no valid notice answered your application, the release may be due without arguing about defects or the employer. That turns on dates, so it is checked first.

   How: Put the application that asked for the release beside every Payment Notice and Pay Less Notice for that payment, with their dates. Compare them with the payment clause in your subcontract. Where the subcontract sets no dates, the Scheme for Construction Contracts (England and Wales) Regulations 1998 fills the gap. Send them to us and we test each one.

3. **Find the release clause in each subcontract, and read it word for word**

   Why: Each release falls due on the event your subcontract names, not on custom or the programme. Many never mention the employer at all.

   How: Look in the retention or payment clause and any schedule of amendments. For each release, note the percentage held, the event that triggers it and when payment follows. Note any mention of the employer, the main contract or your main contractor being paid, and send those exact words to your solicitor.

4. **Check any final account or settlement for retention before you sign**

   Why: A final account or settlement may cover more than the work it describes, including the retention. Once it is signed, that can be hard to undo.

   How: If your main contractor sends one to sign, check whether it deals with retention and whether it says 'full and final'. Send it to your solicitor before you sign, and to us if you want the retention valued first.

5. **Keep every certificate, request and reply exactly as it arrived**

   Why: Retention turns on dates: when each release fell due, when you asked and when they answered. An original email keeps its date and time; a copy, a printout or a screenshot may not.

   How: Make one folder for each job. Save the subcontract, the certificates, your requests and every reply in it as the original emails, and do not edit or rename the attachments.

What to gather

Everything the work is built from. Copies are fine: send what you have and we will tell you what is missing.

- **The list of jobs where retention is still held.** Every job you can name from the last 6 years or more, including the ones written off in your head. A customer list from your accounts package is a fine start.

  Where to find it: Your accounts package, old job folders, or an evening's remembering.

- **The subcontract or order for each job, where you still hold it.** PDFs or scans with all schedules and amendments, however incomplete the set; say which jobs have nothing.

  Where to find it: Old commercial folders, the order emails, the filing box nobody opens.

- **Every valuation, application and certificate you hold for each job.** As issued at each stage, not retyped into a clean schedule afterwards. If only the last account position survives, send that.

  Where to find it: Your QS's file of applications and certificates, from the first valuation to the last.

- **Any completion, practical completion or making good certificates.** As dated PDFs or scans.

Where to find it: The email trail around handover, where they usually sit.

- **Any notice given for holding the retention.** As served, in full: the Pay Less Notice, the withholding notice or the email it came under.
  Where to find it: Your inbox, or the payment file for the job.
- **The release correspondence and any defects list relied on.** Your requests and their replies, forwarded as the original emails with dates intact, and any defects list exactly as sent.
  Where to find it: Sent items are usually more complete than inboxes. The defects list is the one your main contractor sent you.
- **Any deadline you already know of.** Any date your solicitor has confirmed, or any settlement, insolvency or dispute touching a job.
  Where to find it: Your solicitor, or your own notes on each job.

Why Quantsurv

You can do a good deal of this yourself, and the steps above show how. If you would rather have it done for you, or want the notices checked before you act, this is the work we do.

- **Specialists in exactly this.** We work only for subcontractors, on the claims and disputes that cost them money. Behind it: 10 years on the commercial side of construction, and £100m+ of construction projects worked on.
- **A fixed fee, agreed first.** We never bill by the hour. Fixed fee agreed in writing after we see your records. Each later stage, including adjudication support, has its own fee agreed before it starts. If the work runs over, the cost is ours, not yours.
- **Fast where it matters.** The timetable is agreed in writing at scoping and then kept. A fixed fee also gives us every reason to finish quickly.

How Retention Claim would run for you

The whole service, step by step. Where your answers decide a route, it is shown under the step it belongs to.

Step 01 You tell us what is stuck

One call: which jobs, roughly how much, how far back, and any reasons you have already been given. Name the main contractors first, so we can check we are free to act. The first conversation is free.

Step 02 You send the records you hold

Everything below, however patchy, in one go. An incomplete file is normal, and sorting it is our first job.

Step 03 We list every job and check the deadlines first

One row per job and per release, with the date each release fell due as far as the records show. Deadlines come before anything else is valued.

What you get: One register of every job and release, with any close deadline flagged to you in writing that day

- **If a release is close to the last date it can be recovered:** we flag it in writing that day, and it goes to your solicitor that week. The step that protects the sum comes before anything else.

Step 04 We confirm the scope, fixed fee and timetable in writing

Once we have seen the records, we set out which jobs and releases the work covers, the timetable and the fixed fee.

What you get: A written scope, timetable and fixed fee

Step 05 You decide whether to go ahead

Nothing further starts until you agree the scope and the fee in writing.

Step 06 We read each subcontract's release terms

We read each signed subcontract, amendments first. We note the percentage, each release's trigger in the subcontract's own words, the certificate or event it depends on, and when payment follows.

What you get: Each release's trigger and payment terms, in the subcontract's own words

- **Where a release waits on the employer or the main contract:** your solicitor says whether that condition can hold your money. Meanwhile the release stays in the payment cycle.

Step 07 We rate the evidence for each release

For each release we rate the subcontract, the trigger document and the payment paperwork as held, partly held or missing.

What you get: The evidence rating for each release, one line per release

- **If the evidence is strong:** the release goes straight on to be valued and requested.

Step 08 We value each release, with every sum traced

For each release: whether its trigger has happened and when, and the sum held from the applications and certificates. Each is marked due, overdue, conditional or at risk.

What you get: The sum held on each release, traced to the payment paperwork and marked due, overdue, conditional or at risk

Step 09 We report the position and the route for each release

We report what is held, what has fallen due and what we recommend for each release. The route depends on where each one stands.

What you get: A written position for each release, with the route we recommend

- **If the trigger has happened:** we recommend a request in your next application, or by letter, with the evidence attached.
- **If a release is close to the end of the time allowed to recover it:** the protective step your solicitor confirms comes first. The request follows once the sum is protected.

Step 10 You approve the requests, or change or narrow them

We write each request and each answer to a reason already given. Nothing is sent until you approve it.

What you get: Each request and each answer, ready to go in your name

Step 11 You send the requests in your name

Each request goes in your next application or as a letter, citing the clause, the trigger, the date and the sum, with the evidence attached.

Step 12 We track each reply to its payment date

We check each Payment Notice, Pay Less Notice and reply against the request, and each payment against its final date for payment.

What you get: A record of each reply and payment against its request and its final date for payment

Step 13 We negotiate and record any agreement in writing

We chase on a fixed timetable, and answer each new reason with the document that answers it. Any agreement is recorded in writing: the sum, the date it is paid and any condition.

What you get: Every agreement in writing: the sum, the date it is paid and any condition

- **If the sum is still held without a valid reason:** we tell you whether adjudication is worth it, weighing the sum against the cost.

Step 14 You decide whether to settle, adjudicate or stop

With our view of any offer and the cost of going on in front of you, you choose the route for each sum still held.

Step 15 We prepare the money side of the adjudication

Whoever you appoint runs the adjudication. We build the money side: each release, its trigger, the sum and the documents behind them. Under the Housing Grants, Construction and Regeneration Act 1996, the decision is due 28 days after referral unless extended by agreement.

What you get: The money side of the adjudication: each release, its trigger, the sum and the documents behind them

Step 16 We close out the retention and hand over the pack

You receive a job-by-job calculation of the retention and its release position, supported by payment requests and responses to the reasons given for withholding it. The final record tracks payments, agreed dates, future releases and write-offs.

Your path through the questions

The questions you answered, in order, as the page drew them. Your answers are in yellow, with the line running through them.

What is happening with your retention?

It is still held on finished jobs, and nobody has asked for it

I have asked, and my main contractor will not release it

The main contractor holding it has gone bust, or is in administration

Nothing is overdue yet, but I want to stop losing retention in future

A mix of these, or I am not sure

Does a deadline on any of this retention fall this week?

Yes | **No** | Not sure

Has any main contractor holding your retention gone bust, or shown signs of trouble?

No, not that I know of | Yes, one has gone bust or into administration

There are signs one of them is in trouble | Not sure

How many finished jobs still have retention held?

One job | **2 to 5 jobs** | More than 5, some going back years | Not sure

How long ago did the oldest of these jobs finish?

Within the last 2 years | 2 to 5 years ago | **More than 5 years ago** | Not sure

Do you still have the subcontract or order for these jobs?

Yes, for every job | Some or all of them are missing

Some were never signed, or the terms are disputed | Not sure

Has the event that releases the retention happened?

Yes: the work is complete and the defects period has ended

The work is complete, but the defects period has not ended yet

The work is done, but the certificate it waits for was never issued | Not sure

What reason has your main contractor given for holding it?

It is waiting for the employer to release its own retention

Defects, including other trades' work or damage after I left | It says I owe it money, such as contra-charges

No real reason, or no reply at all

When you asked for it, did a notice come back in time, saying what they would pay and why?

Yes, in time, with the sum and how they worked it out

No notice came, or it came late or gave no workings

I asked by letter or email, not in a payment application

Not sure

Have you signed a final account or a settlement on any of these jobs?

No

Yes, on some of them

Not sure

Do you still have the applications and certificates for these jobs?

Yes, for most of them

For some of them

Very few, or only what my accounts show

Not sure

Roughly how much is at stake?

Under £5,000

£5,000 to £25,000

£25,000 to £100,000

Over £100,000

Not sure

Your report

Next step

> **The first conversation is free and commits you to nothing.** Reply to the email this report came with, or email contact@quantsurv.com, and we will already have your answers.