



Claim Form - Claimant's copy

In the County Court Business Centre
Online Civil Money Claims

Claim number: 423MC115

Received on: 5 July 2023 at 4:58PM

Issued on: 6 July 2023

1. Claimant's details

Name:

[REDACTED]

Business name:

[REDACTED]

Address:

[REDACTED]

Email:

[REDACTED]

2. Defendant's details

Name:

Nominet UK

Address:

NOMINET
MINERVA HOUSE,
EDMUND HALLEY ROAD
OXFORD
OX4 4DQ

3. Claim

Reason for claim:

3.1. I submit a claim to recover fees demanded as either a “joining fee” or “subscription fee” by Nominet UK (the Respondent) since I joined in August 2019, the invoices for which are provided in Annex 1, on the false premises that the company had a bye-law set under Article 19 and 52.1 of the company to collect the subscription fees from me. The Memorandum and Articles of Association of the Company along with known purported bye-laws are provided in Annex 2. As far as I’m aware, no bye-law has been promulgated for the demand of a “joining fee” or “subscription fee”, and if one exists, the Bye-law would need to be executed in accordance with Section 44 of the Companies Act 2006, and Article 45 of the Company. If no Bye-law exists setting the subscription fee that was taken from me, then no subscription fee was due under the Company’s Articles, the fees demanded from me amounts to unjustified enrichment of the Respondent, as the membership of the company is effectively free.

3.2. A request to the Respondent via a forum provided for members for a copy of the bye-law under section 51.1 did not receive any response, the thread is attached in Annex 3.

3.3. The declaration in article 55 to become a member of the company states:

3.4. I ... wish to become a Member of NOMINET UK, subject to the provisions of the Memorandum and Articles of Association of the Company.

3.5. By becoming a member, I therefore agreed to the terms of the Memorandum and Articles of Association of the Company, which includes providing a guarantee not exceeding £10 as stipulated in Clause 8 of the Memorandum. The online process for becoming a member has not provided me with any record of what was provided or agreed to as part of my membership application, therefore I am unable to confirm if the declaration was the same. If no bye-law existed for the subscription fees, then I could not have agreed to the fees set out on the Nominet website and demanded from me.

3.6. The first element of my claim is the proportion of what was invoiced on the 8th August 2019 as a “joining fee”, being £400+VAT. The joining fee is only mentioned on the Respondents' website, and is included as Annex 1e. The

Memorandum and Articles of Nominet UK make no provision for a joining fee in addition to a subscription fee, therefore, the joining fee is ultra vires as there is no authority for the board to set a joining application fee in addition to a subscription fee. The second element is the annual subscription fee of £100+VAT, demanded alongside the "joining fee" in 2019, and subsequently in 2020, 2021 and 2022, where the payment for the invoices were taken automatically from unallocated funds on account. As I am not VAT registered, the VAT could not be offset, therefore becoming part of my claim. The total unjust enrichment would therefore amount to £800+VAT, which is the £960 claimed.

3.7. Further reasoning for my claim is provided in the opinions of Iain Mitchell KC (Scotland), which is attached as Annex 4. Iain Mitchell KC's Opinion of 21 September 2022 (Annex 4b) provides the following analysis:

3.8. Without the promulgation of bye-laws and (after 6th July, 1998) confirmatory ballots achieving a 75% majority, there is no authority given to the Board to set subscriptions, and the purported subscription demands are clearly void, as being ultra vires. It is not possible to argue that the 1997 subscriptions (which were lawfully set) simply continue as a default, because Article 19 is perfectly clear that those rates are to apply only up to, but not beyond, 31st August, 1997.

3.9. The Nominet UK board claimed to have opinions (plural) that contradict the published opinions of Iain Mitchell KC, however, only a narrow opinion on one element has been shared, and that is included as Annex 5, which is not directly relevant to this claim. The Respondent has not provided one iota of legal advice or fact to rebut the conclusion that Membership Subscriptions have been unlawfully collected since 1997.

3.10. Collectively, members have attempted to reach out to board members of Nominet UK in good faith to try to deal with the issues together, which is provided in Annex 6. Instead, no cooperation has been forthcoming by the board to address the issue at hand.

3.11. The non-existence of the bye-law on subscription fees and corresponding voting rights is further confirmed by a consultation the Nominet board has recently opened, which introduces a new subscription fee bye-law, and removed the interlinking of the subscription fee and voting rights, this is included as Annex 7. Section 6 of the consultation questionnaire (Annex 7c) (states (Page 16):

3.12. Nominet has always had a flat membership fee for all Members, and we believe that all Members have understood this basis and agreed to it when becoming a Member of the company. However, this has never been correctly reflected in the Articles so we wish to rectify this position.

3.13. The first sentence can be dispelled by an Archive of the Nominet website from 1996, which was referenced in Annex 6c, and included as Annex 6d. The fact that the Respondent now wishes to “rectify this position”, shows that there is a material issue here. If the Respondent wishes to “rectify this position”, then they will be open to the restitution of the unjust enrichment.

3.14. All members of the board are members of the company. Article 2 and 3.5 does not exclude board members from paying a subscription fee, if a subscription fee bye-law has been promulgated. If Nominet paid the subscription fee on behalf of directors, then that payment would be a benefit in kind and subject to tax and national insurance contributions. In Annex 8a I provide correspondence with the company secretary regarding this issue, where a former director, Mr David Thornton, was not charged any subscription fee whilst he was a member of the board, despite having access to membership benefits, whilst the Respondent demanded a subscription fee from myself. Further, in Annex 8b, I include a statement made by a prominent Nominet member confirming the situation regarding free membership provided for board members. It would appear therefore, that there is precedent in the subscription fee being zero for members of the board, who at the same time have demanded subscription fees from other members. This is a further argument towards the claim of unjust enrichment.

3.15. Promulgation of bye-laws would be documented in board minutes, which the Respondent is required to record and keep under Section 248 of the Companies Act 2006 (or its predecessor).

Timeline of what happened:

8 August 2019	Application for membership of Nominet
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Evidence:

Receipts	Invoices (Annex 1)
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Contracts and agreements	Memorandum and Articles of Association (Annex 2)
Letters, emails and other correspondence	Forum post requesting location of subscription fee bye-law (Annex 3)
Other	Opinions of Iain Mitchell KC (Scotland) (Annex 4)
Other	Opinion of Mr Andrew Thornton KC (Annex 5)
Letters, emails and other correspondence	Correspondence sent to the Respondent (Annex 6)
Letters, emails and other correspondence	Consultation on changes to the Memorandum and Articles of Association (Annex 7)
Letters, emails and other correspondence	Correspondence on subscription fees paid by board members (Annex 8)

4. Claim amount details

Claim amount items:

Joining Fee	£480
Subscription Fee (2019)	£120
Subscription Fee (2020)	£120
Subscription Fee (2021)	£120
Subscription Fee (2022)	£120

5. Total amount

Claim amount:	£960
Claim fee:	£70
Total:	£1,030

6. Statement of truth

I believe that the facts stated in this claim form are true.

I understand that proceedings for contempt of court may be brought against anyone who makes, or

causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

[REDACTED]

6 July 2023

If you don't respond before **4pm, 25 July 2023**, you could get a default County Court Judgment (CCJ) made against you.