

## Late payers beware – the Late Payment Act can bite



The Late Payment of Commercial Debts (Interest) Act 1998 ('the Act') has been around for a little while now but suppliers are often reluctant to exercise their rights under it for fear of damaging commercial relationships. However, there is nothing to stop a supplier storing up these rights to bring a claim in the future. This can come as something of a surprise to their customers.

The Act provides that suppliers who are paid late by businesses can claim statutory interest on overdue invoices (unless a contractual rate is specified) of 8% over the Bank of England base rate. This is a punitive interest rate, and is often what is focused on, but there is another danger lurking for late payers.

In addition to interest suppliers can claim a fixed sum per invoice. For debts with a value up to £999.99 this sum is £40, between £1,000 to £9,999.99 it is £70 and £100 for higher values. This charge can be applied to each "late commercial payment". On the government website giving advice on the Act this charge is described as "a fixed sum for the cost of recovering a late commercial payment".

Many suppliers have traditionally delivered multiple small invoices, for example courier companies may invoice for each job done. Even in the most efficient of accounting systems not all of these invoices will be paid on time and the amounts on those invoices will therefore be "late commercial payments". In reality, the courier firm is unlikely to wreck the relationship with its customer by then seeking to slap a £40 charge on top of a £25 invoice which is paid a few days late.

However, the gloves can come off when the relationship comes to an end. In these circumstances there is nothing to stop the supplier trawling back through their records and identifying every invoice that was paid late. They can only go back for 6 years as the court will not allow a claim for invoices older than that.

A courier company might easily identify 100 invoices which were paid late over this period. Whilst each invoice might only be small, each will attract a charge of £40. Even if each invoice is only paid a day or so late and the interest that can be claimed is miniscule, these charges can be applied. Thus a few hours work with a spreadsheet by the courier can produce a claim against their former customer for £4,000, which is likely to come as something of a shock. The debt recovery industry is alive to this scenario and are starting to promote such claims to suppliers, even describing them as a “potential goldmine”.

From the legal perspective there is no obvious defence to such a claim as the charges are set by statute and are chargeable as soon as interest starts to run on a late commercial debt. In the scenario described above, where interest being claimed is tiny and the charges add up to more than the value of the invoices, this feels punitive and unfair. The £4,000 cumulative figure is wholly disproportionate to the claim if it is related to the cost of recovering a tiny amount of interest and this would seem to be an abuse of process. However, the actual wording of the relevant provision (s.5A of the Act) refers to the charge as being “compensation arising out of late payment” which indicates that it is not in fact linked to actual costs of recovery (and indeed section 5A makes separate provision for recovery of “reasonable costs”). This means that this sort of legal argument is highly unlikely to succeed.

In conclusion, any business which has historically paid multiple small debts to suppliers, and which may not have paid those debts on time, needs to be aware of the potential of a retrospective claim under the Late Payment Act.

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