

My invoice remains unpaid – am I too late to issue legal proceedings?



If you have been unable to obtain payment of an invoice you may be wondering when it becomes too late to issue legal proceedings. The answer is that it's probably earlier than you think!

The current position

The general rule is that if it becomes necessary to issue legal proceedings to recover an unpaid invoice, then the creditor must do so within the statutory time limit of six years from when the clock starts to tick. If the creditor fails to issue proceedings within the limitation period, it loses the ability to use the Court as a means of obtaining payment.

But when does the clock start to tick?

This question was recently examined by the Court of Appeal in the case of *Consulting Concepts International v Consumer Protection Association* [2022] EWCA Civ 1699. In this case, the Court of Appeal confirmed the principle that a creditor's right to take action against a debtor (and the point at which the clock starts ticking) arises when the creditor, as supplier, has delivered the relevant goods to the debtor or the relevant services have been provided in accordance with the sale contract. The right of action does not, as is often believed, arise when the creditor raises an invoice. The invoice is merely a statement of what the creditor considers is owed by the debtor.



If the sale contract stipulates a credit period (say, 30 days from month end) then all that means is that the parties have agreed when an invoice must be paid. For the purposes of the limitation period, the clock does not start ticking from the end of the credit period but from the point in time when the creditor is entitled to be paid for the supply of goods or services.

The facts in consulting concepts

Consulting Concepts provided services to the Consumer Protection Association (CPA). In accordance with the contract, invoices were submitted to the CPA for services provided with payment due on 90-day terms. The invoices were not paid and, six years later, Consulting Concepts issued legal proceedings.

The CPA applied to strike out the legal proceedings arguing that more than six years had elapsed so Consulting Concepts was out of time.

What did the court decide?

The Court ruled in favour of the CPA. Consulting Concepts was out of time. Consulting Concepts was wrong in assuming that the clock started ticking at the end of the 90-day credit period noted on their invoices. The clock had started ticking when the services had been completed. This was, in the Court's view, the intention of the law as otherwise a creditor could delay the start of the limitation period.

The Court did, however, note that if a contract was sufficiently worded, then this could have the effect of giving a creditor control over when limitation period starts running, but this would require very careful wording.

Practical implications

We all know the longer a creditor leaves it to recover unpaid invoices, the harder it becomes to collect it in. In our experience, few creditors want to leave debts unpaid until the six-year limitation period is about to expire, but it's not uncommon for us to be instructed to issue proceedings many years after an invoice was first issued. For this reason, it's prudent to keep an eye on your aged debts and if you do find yourself with an unpaid invoice that is aging or you think is close to the limitation period and you want to issue legal proceedings, then you should instruct us to ascertain quickly when the statutory limitation period starts and ends so we can protect your position.

Contact us

We have a team committed to collecting debts in various sectors who will be able to advise on supply agreements, when limitation periods start and of course take the appropriate action to recover your debts.

If you want to be ahead of the game, we also have the expertise required to review your contracts and agreements and offer our opinion as to the validity of a clause delaying the limitation countdown from starting or if you lack such a clause, we can help you draft one.



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