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Don't let your purchaser get you down

All businesses, voluntary organisations and public sector bodies have a right to charge interest of 8% above base rate on amounts due on commercial contracts made with other businesses or the public sector, under the Late Payment of Commercial Debts (Interest) Act 1998.

Until recently, this statutory interest could be charged either:

1. **30 days from** whichever is latest out of :

    (a) the day the obligation of the supplier is performed,

    (b) the day on which the purchaser has notice of the debt (e.g. in the form of an invoice), or

    (c) the day on which a procedure of acceptance or verification procedure has come to an end (see below for more on (c)), or

2. From the payment date agreed between the parties.

Regulations introduced in 2013 now tighten up the payment dates which may be **agreed** under option 2, so that they come more into line with the general 30 day fallback position.

Public authority purchasers

What is of particular interest to charities working with public sector organisations is that those organisations now have the strictest time limits when it comes to paying your bill.

If a payment date has been agreed, interest will generally run from that date. However, if the date agreed is later than the 30 day fall-back position then for a public sector purchaser interest will, regardless of that agreed date, start to run 30 days after the latest of a) to c) above.

The effect of this is that public authorities **must** pay their bills within 30 days if they want to avoid late interest payments.

Other purchasers

A voluntary organisation or business purchaser gets more leeway. As above, the starting point, if a date has been agreed, will be that date. However, again certain statutory assumptions step in to ensure that statutory interest kicks in at a certain point, meaning a purchaser cannot get away with forcing a supplier to agree a payment date far in the future.

In this case, interest will start to run from 30 days after the default 30 days, allowing a 60 day maximum window for payment.

These non public bodies are allowed under the regulations to ‘expressly agree’ a later date for payment with their supplier, provided such date is not ‘grossly unfair’ to that supplier. This avenue is **not** open to public sector bodies.

Time limits for verification procedures

A time limit of 30 days has now been set upon the length of time allowed for any ‘procedure of acceptance or verification’. Regardless of whether the parties might agree a longer period, interest will start to run from 30 days (or earlier of course if a shorter verification period had been agreed).

Again, it is open for the parties to ‘expressly agree’ in the contract a period for completing the procedure in question which is longer, provided it is not ‘grossly unfair’ to the supplier. In this instance this would appear to apply in agreements with both a public authority and a business purchaser.

Downsides

It has been pointed out that organisations will often use the time allowed under statutory periods to maximum advantage: for example they will always make their procedure take 30 days, even if it could have taken a shorter period. In the situation where the purchaser is a *non public authority*, this could lead to interest not running for up to 90 days (30 for ‘acceptance or verification’ (or longer, of course, if agreed and not ‘grossly unfair’), 30 days from that procedure under the default position, and a further 30 if the parties agree a date which is not the default position date).

In a public authority contract where a procedure of verification is used, this will mount up similarly, but here to a maximum of 60 days (unless a longer verification period were agreed which were not ‘grossly unfair’).

Benefits

There are clear benefits to this for charities who contract with public bodies.

From the date of verification/ their receipt of your invoice/ your completion of the task, the public authority has only 30 days to pay your bill before interest starts to run. You do not need to send them a notice to effect this: interest runs automatically under the statute. The new changes affect contracts made on or after 14 May 2013: so if you currently operate under a contract made on or after that date, and it purports to offer a later date for payment, this will be of no effect.

Likewise, a contract can only successfully displace the statutory interest if it offers a ‘substantial other remedy’ for later payment of the debt, so if your contract claims that the statutory interest is not payable it should offer you something materially equivalent in return.

In addition, any procedure for verification of your services meeting with what is required of you under your contract should not take more than 30 days. If you are asked to agree to a longer period you could well counter that such a period is ‘grossly unfair’ and therefore that interest under the statute should run from the expiry of 30 days and no later.

As Debenhams’ recent invitation to suppliers to cut their prices demonstrates, there are many ways besides late payments in which purchasers can make things difficult for suppliers. However if you are having difficulties with a local authority which fails to pay on time, these are useful remedies to be aware of.

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