

Bridge McFarland - Business News Article

Are your terms and conditions of business costing you money? (nsk)

Historically, businesses acting as suppliers have tended to include clauses in their standard terms and conditions that entitle them to claim interest on bills that are paid late. Whether they enforce those conditions or not is a matter for them but they always have the protection of knowing that their contracts include the option.

It is common for such clauses to refer to interest being payable at a set rate over the base rate of a particular bank, usually the supplier's own bank. 2% above base rate is an often-used figure. When base rates were of the order of 8% or more, such clauses represented a significant increase over the standard 8% flat rate that can be claimed when issuing a claim in court.

However, for the last few years of low inflation and low interest rates, the base rate has been below 5% and businesses tied to using their own interest clauses have lost on interest they could have claimed under statutory law, albeit not to a large extent.

However, in autumn 2002 the final part of a highly relevant Act of Parliament came into effect. Called the Late Payment of Commercial Debts (Interest) Act 1998. The Act brought into effect an EC Directive. It became law on 1st November 1998, initially only to the benefit of small businesses. As of the 7th August 2002 all contracts between two businesses have been caught by this legislation.

Interest

The Act creates a statutory right to recover interest on any "qualifying debt" which becomes overdue. A qualifying debt is any obligation to pay a contractual sum, being the whole or part of the contract value. Our interpretation of this is that it applies to any invoice, providing that invoice can properly be raised. For example, if a customer has a repeat order and is invoiced weekly, each invoice is a separate qualifying debt and interest runs on it from the day after it should have been paid.

Good news so far, but there is more. The interest rate that can be claimed is 8% above the base rate of the Bank of England. In truth, the interest rate does not vary each time the bank's rate does (which can be as often as every month) but only changes twice a year. This makes calculating interest easier.

Compensation

And there is yet more good news. The Act also creates a right to claim a compensation payment on each qualifying debt. This varies from £40 to £100, depending on the value of the debt in question. That might not seem much but if a business is chasing a debt consisting of numerous small invoices, it can add up to a substantial sum.

Calculating the compensation and interest charges is a time consuming and complex task as the interest on each invoice has to be calculated for each interest period. This is something that we can assist with and the additional sums that can be claimed almost invariably exceed the costs of our doing so by a considerable margin.

Finally, because it is a statutory entitlement that is effective from the day the bill is late, both the interest and the compensation can be claimed in a Statutory Demand, should that be chosen as the preferred method of recovery.

The catch

The problem for businesses is that the Act excludes an invoice creating a qualifying debt if the contract provides for a "substantial remedy" for late payment. This is open to interpretation but it is generally safe to work on the assumption that most interest clauses stated in standard terms and conditions will escape the catch. If your present terms allow for 2% over the base rate, you may be losing out on an extra 6% interest and compensation.

If you have not changed your standard terms and conditions of business since August 2002, we strongly recommend that you do so now to take advantage of the new legislation. It is perfectly possible to draft replacement terms and conditions that mimic the wording of the Act. It is virtually incomprehensible that any debtor could argue that such terms are too onerous when parliament has stated otherwise. Alternatively, you can dispense with interest clauses altogether and simply rely on the Act.

We can assist in the drafting of new terms and conditions to take advantage of the Act and any other relevant law governing businesses.

Bridge McFarland have already had much success in recovering commercial debts, including interest and compensation claimed under the Act. If you have any commercial debts you need to recover, we offer a comprehensive and effective package for debt recovery, including a fixed cost scheme for frequent instructions.

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