

Blake Laphorn Tarlo Lyons' nursery and childcare news

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the impact of the Late Payment of Commercial Debts (Interest) Act 1998

There is often a temptation to leave the payment of debts as late as possible. Suppliers to a setting may not specifically incorporate in their terms of business the right to charge interest (assuming you even see their terms of business) so you could be forgiven for thinking that they have no right to charge you interest if you are late in paying them.

However the Late Payment of Commercial Debts (Interest) Act 1998 provides a supplier with a right to recover 'statutory interest' from the purchaser on unpaid debts together with a right to an 'additional fixed sum'. Those rights are automatically incorporated into contracts (whether made in writing or orally) whether or not the parties to the contract specifically refer to the provisions of the Act.

The Act applies to all contracts that were made on or after 7 August 2002 with limited applicability to contracts that were made before that date. It is important to note that the Act does not apply to contracts where the supplier deals with consumers but only to those contracts where the supplier deals with other businesses. Therefore, although it will not apply to your childcare services where those are delivered to parents, it will apply if you are providing those services under a contract with a company for whom you are providing childcare for their employees for example.

Statutory interest under the Act starts to run on an unpaid debt on the day after the day the debt was due to be paid. That will generally be the day agreed between the supplier and the purchaser. However, in the absence of that agreement the Act provides how to work out when the debt falls due.

The rate of statutory interest is fixed for two separate six-month periods per year; 1 January to 30 June and 1 July to 31 December. The applicable rate is the one applying on either 30 June or 31 December in the six

month period preceding the period when the debt fell due to be paid.

Once statutory interest begins to run on an unpaid debt, the supplier is also entitled to an additional 'fixed sum' from the buyer which ranges from £40 to £100 depending on the amount of the debt.

Confusion can arise in circumstances where the contract agreed between the supplier and the buyer contains a right for the supplier to charge interest on the outstanding debt. Unless the contract provides 'a substantial remedy for late payment of the debt' the statutory interest rate will apply. It may not be straightforward to establish whether the contract terms provide a 'substantial remedy' although the BERR provides some guidance at www.payontime.co.uk

points to note:

- Don't assume you are safe from an interest charge just because your supplier has not provided terms of business.
- Your supplier does not need to submit a separate invoice for the statutory interest or the additional fixed sum as entitlement arises automatically.
- The rate in force on the relevant 31 December or 30 June will be the Bank of England Base Rate at either of those dates plus 8%



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