

Technicalities or confusion are not legal excuses for withholding contractor payment

UK Contractors suffering from [late or non-payment of invoices](#) have had a welcome boost from a [recent Court of Appeal ruling](#).

Sometimes fobbed off or ignored by their agents and clients when chasing unpaid invoices, contractors are often given the excuse that payment is delayed because there is an error in a particular invoice. And all too often, that is then used as an excuse not to pay any other invoices until the 'error' has been sorted out.

But a new ruling by the Court of Appeal states that it is 'not fair for an organisation to withhold the whole payment for goods or services just because there was confusion over some of it'. Not only does this strengthen the hand of contractors [chasing late payments](#), but it also allows them to [charge interest on outstanding invoices](#) not in dispute.

This could potentially open the floodgates for claims of punitive interest by contractors against their agencies or clients, for cases where payments have been delayed because of an issue over one invoice.

Late payment legislation

The [Late Payment of Commercial Debts \(Interest\) Act](#) was introduced by the government to protect small firms, like [contractor limited companies](#), from being abused by larger companies that use their suppliers like a bank, by withholding payment.

The legislation says that a business owed money can charge interest for late payments at 8% over the [Bank of England's](#) base rate from the date at which the payments for invoices submitted become overdue.

In practice, however, contractors can find themselves in the position of not wanting to impact on the future relationship with their client or agency, and accepting that big businesses work on the assumption that 'might is right'.

Invoices don't have to be perfect

A frequent excuse given to contractors for late or non-payment is that there were errors in the invoice. But following the ruling, this is no longer grounds for the client or agency to withhold all payments, and contractors can charge interest on sums not in dispute.

In his ruling, which was over a dispute between a plant hire company and [DEFRA](#), the UK government's Department for Environment Food and Rural Affairs, the Court of Appeals Judge Lord Justice Jacob commented that: "...it makes no sense to suppose that the Act requires the invoice to be perfect before interest can run."

"If it did, it would lead an employer looking for the smallest detail of error in an invoice. If he found one he could delay payment of the whole sum due and avoid payment of the statutory interest. The purpose of the Act would be frustrated."

Incorrect invoice does not mean no debt exists

In the original case, DEFRA had claimed that if an incorrect invoice had been submitted by their supplier, then no debt existed. If no debt exists, then the client can of course claim that there is no interest to pay on a non-existent debt.

But Lord Justice Jacob was having none of that, saying, "[the supplier] had done the work for and supplied the plant to DEFRA [the client]. To say that there was no obligation whatsoever to pay anything at all unless a correct invoice had been submitted is untenable. An invoice is a two-fold statement by the supplier – 'this is what I think you owe' and 'pay me now'. Getting the former wrong does not mean that nothing is owing."

These words interject a hefty dose of common sense into the contractual relationship between a contractor and their client or agency. The Judge is effectively saying that a minor dispute over paperwork does not constitute a right for the client to pay nothing and therefore potentially opens a window for contractors to charge interest.

Interest claims may at last have 'teeth'

Mo Bhaskaran, litigation and dispute resolution specialist at law firm [Pinsent Masons](#), says that as a result of this case, suppliers have been provided with the leeway they need to push claims for interest on late invoice. As he points out, up to now a client or agency owing money could get away without paying interest if they could find an error in their supplier's paperwork.

"If it is clear that a significant part of the debt cannot be disputed then debtors need to pay the undisputed amount to avoid the risk of interest under the Act being awarded on the whole amount," explains Bhaskaran.

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"Lawyers will often try to rely on what might be described as technical or legal arguments that take advantage of the lack of formal validity in the actions of the other party," continues Bhaskaran. "The court here decided to look beyond detailed technical arguments around the accuracy of invoices and applied a common sense approach consistent with the reason why the late payment interest legislation was brought in.

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Mo Bhaskaran, Pinsent Masons

"The Act is to incentivise late payers and, following this judgment, debtors will need to be careful before basing non-payment on minor deficiencies affecting documentation."

Published: Tuesday, March 17, 2009

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