

## Not Getting Paid on Time?

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Cleaver Fulton Rankin's specialist debt recovery unit was established around 18 years ago. The unit handles a large volume of contested and uncontested debt cases. We have a wide range of clients including a major trade credit insurer, financial institutions, accountants, building contractors, schools and employment agencies. The unit has also been rated in the top tier by Chambers UK Legal Directory on numerous occasions with Chambers specifically referring to our ability to 'turn work around swiftly and give excellent feedback on progress' and offering 'good value for money'.

One important piece of legislation in our work is the Late Payment of Commercial Debts (Interest) Act 1998. The Act seeks to deter late payment in commercial transactions for the supply of goods, or services by imposing a punitive rate of interest at 8% above the Bank of England base rate. A recent decision by the English Court of Appeal in the case of *Ruttle Plant Hire Limited v Secretary of State for Environment Food & Rural Affairs* [2009] EWCA CIV 97 makes it clear that a party who refuses to make any payment, where only an element of the invoice is in dispute, will have to pay this high level of interest on the entirety of the amount properly due and owing.

As often occurs in daily business life, the Plaintiff in this case made errors in the calculation of its invoices. The Defendant disputed the invoices and refused to pay anything, even though it was accepted by both parties that the services contracted for had been carried out. The Court of Appeal held that it was not necessary for the invoice to be perfect before it would apply the statutory rate of interest. If it were otherwise, the Defendant could look for the smallest mistake to withhold all payments so as to strengthen his position in negotiations over disputed amounts and to make matters worse, avoid payment of statutory interest on sums properly due and owing. The only exception is where the contract expressly provides that an amount will not be due and owing until a pro-forma request for payment has been supplied.

The paying party should still withhold payment of monies reasonably in doubt, as the Act enables the Court to refuse the award of statutory interest in circumstances where, by reason of the conduct of the supplier or the interests of justice, the statutory interest should be remitted in whole or in part. For example, the Court is unlikely to award interest where the supplier has created or allowed uncertainty and the paying party is certainly not liable for the payment of statutory interest where the supplier has never asked for the money by omitting any sum from its invoice.

However, in the words of Lord Justice Jacob "what [the paying party] cannot do is to pay nothing at all and expect to escape the high rates of interest imposed by the Act on what on any view is due". The answer is for the debtor to pay, as a minimum, what he considers he ought to have paid, say why he is not paying more and ask for the disputed amount to be substantiated.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*