

Trouble Getting Paid on Time?

Dairine Walsh of Beachamps Solicitors sets out the law on late payments.



Dairine Walsh

“one in every four insolvencies is due to late payment”

The Prompt Payment of Accounts Act 1997 (the Act) ensures that all public bodies (and contractors on public sector contracts) pay their suppliers promptly. The Act contains provisions regarding an automatic entitlement to interest in respect of amounts due but not paid on time and payment in a case where a purchaser considered the invoice to be incorrect or where goods were disputed.

Most of the Act was repealed by the European Communities (Late Payment in Commercial Transactions) Regulations 2002 (the Regulations) (which gave effect to European Directive 2000/35/EC on combating late payment in commercial transactions).

The economic rationale for the Directive is to combat late payments based on the fact that it is estimated that, in the EU, one in every four insolvencies is due to late payment. It is also estimated that this leads to the loss of 450,000 jobs per year in the EU and that outstanding debts of €23.6 billion are lost every year through insolvencies caused by late payment.

The Act and the Regulations have the same main purpose, which is to ensure that suppliers are paid in accordance with the terms agreed between them and the purchaser. Both provide an automatic entitlement to interest on late payment amounts.

Main provisions

The Regulations apply to commercial transactions in both the public and private sectors (the Act only applied to public bodies). Under the Regulations:

1. **Payment must be made to a supplier either on the date specified in the contract or where the contract does not specify the date for payment then the payment must be made 30 days after the**

date of receipt of the invoice or the date of receipt of the goods/services. The Act provided for payment within 45 days where the contract was unwritten or did not specify the payment date.

2. **The rate of late payment interest is “the sum of the interest rate applied by the European Central Bank (ECB) to its most recent main refinancing operation carried out before 1 January and 1 July in each yearplus seven percentage points.” On 1 July 2009 the ECB rate was 1 per cent so with the margin of 7 per cent the penalty interest rate is 8 per cent per annum or a daily rate of 0.022 per cent. The ECB rate may rise or fall after 1 July. However, the late payment interest rate will not change again until 1 January 2010. Penalty interest due for late payments should be calculated on a daily basis.**
3. **It is an implied term of every commercial transaction that where the purchaser does not pay for the goods/services by the relevant payment date (see below for definition) then the supplier shall be entitled to late payment interest.**
4. **Where late payment interest becomes payable the supplier is entitled, in addition to the late payment interest, to specified amounts of compensation towards relevant recovery costs incurred by the supplier as a consequence of the late payment.**

The Regulations do not apply to contracts made before 7 August 2002 and the repealed sections of the Act will apply to contracts made before and still in force after the commencement of the Regulations. The Regulations define “late payment” as meaning exceeding the relevant

payment date. “Relevant Payment Date” is defined as:

- (a) the date or end of the period for payment specified in the contract,
- (b) where the contract does not specify the date or period of payment, 30 days after:
 - (i) the date of receipt by the purchaser of the invoice, or
 - (ii) the date of receipt of the goods or services where –
 - (I) *the date of receipt of the invoice is uncertain, or*
 - (II) *the purchaser receives the invoice before the goods or services, ...*

Pharmacists’ contracts with the HSE

Pharmacists provide services to patients under a number of schemes such as the GMS Scheme, the Drugs Payment Scheme, the Long Term Illness Scheme, and the Dental Treatment Scheme under the Community Pharmacy Contractor Agreement (CPCA) with the Health Service Executive (HSE). There are also a number of ad hoc schemes, inherited from the old health boards, which appear not to be covered by the CPCA, such as the Hardship Scheme and the Psychiatric Scheme.

The CPCA is a written contract between the pharmacist and the HSE and while Clause 12 provides for the board (now the HSE) to make payment for the provision of the services by the pharmacy contractor it does not specify the terms of payment. The payment terms are in memoranda of agreements between the IPU and the Department of Health and Children/HSE. These memoranda are, in effect, contractual terms and are collated in the HSE Administrative

Handbook for pharmacists. Details of payment claim processing and payment are contained in pages 53 and 54.

Regarding electronic claims, the Handbook provides that where the claim is received by the third working day of the month, the pharmacist qualifies for payment within 14 working days of the beginning of the month. For example, a pharmacist submitting a claim electronically for May within the first three working days of June is entitled to be paid on the 14th working day of June which in this example would be 21 June. Pharmacists should be aware that supporting claim paperwork must be received by the 5th day of the month (note: not working day of the month) in order to qualify for early payment.

If the pharmacist is not paid on that date then the pharmacist is entitled, under the Regulations, to late payment interest which is currently 0.022 per cent per day. In addition, depending on the amount of the late payment there are various compensatory payments due. For example, if the amount of the late payment does not exceed €1,000 then compensation of €40 is payable; if the amount is between €1,000 and €10,000 then the compensation payable is €70 and if the amount is greater than €10,000 then the compensation payable is €100. These amounts are to compensate the supplier for the costs involved in recovering the outstanding amounts. There is no requirement to provide evidence of having incurred the costs.

The law applies equally where the claim is made manually but the payment time differs.

In relation to the ad hoc schemes while there appears to be no written contract between the pharmacist and the HSE, a legally binding contract does exist (as all the legally required elements are

fulfilled). However since the payment/credit terms are not explicit then the 30 days specified in the Regulations will apply (*see point 1 above*).

Particularly with regard to the ad hoc schemes the provision in the Regulations relating to “grossly unfair terms” may be relevant. These are terms which waive or vary the relevant payment date where the contract does not specify the date or waive or vary the entitlement to late payment interest - which the supplier considers grossly unfair. In this situation the supplier may apply to the Circuit Court or an arbitrator for an order that the terms are grossly unfair; are unenforceable; varying the terms to accord with the Regulations; or directing the purchaser to pay the supplier compensation, costs and expenses. The Regulations also provide that a representative body, such as the IPU, may, on its own initiative, or at the request of a member apply to the Circuit Court for an order under the Regulations.

Finally, pharmacists should be aware that the Financial Emergency Measures in the Public Interest Act 2009 allows any government minister to make regulations to reduce payments for services provided to or on behalf of any government department. Under the terms of this Act, the Minister for Health and Children announced restructured payments to pharmacists earlier this year.

This article is a summary review of the legislation in Ireland concerning payments in commercial transactions. Any pharmacist experiencing difficulties in payment or late payments should either contact their representative body, the IPU, or a solicitor, for further guidance.

Dáiríne Walsb is a Solicitor in the Corporate and Commercial Department at Beauchamps Solicitors.