



Department
for Business
Innovation & Skills

**BUILDING A RESPONSIBLE
PAYMENT CULTURE**

Government Response

MAY 2014

Foreword

Late payment is an issue that matters hugely to businesses, particularly small businesses. 85% of small businesses say they have experienced late payment in the last two years, and they are owed a total of over £30 billion in late payments.

That is why we published our discussion paper on “Building a Responsible Payment Culture” in December. As the title suggests, we understand that this is a complex question of business culture – one that encompasses an existing legal framework, a wide variety of payment practices between different sectors and the imbalanced relationship that can exist between larger and smaller businesses when they do business with one another.

So we wanted to give businesses a chance to have a say on what we can do collectively to tackle the problem. We did not want there to be any ‘no go’ areas in the debate, so we suggested some potentially radical solutions, as well as asking some much more technical questions, to encourage a frank and open discussion about this issue.

We are very grateful to all who responded – over 100 of you. As we hoped, we have received a broad range of views, which have contributed to a wide and insightful discussion. This document summarises what you collectively told us, and what we now propose to do. The measures we set out will mark a significant step forward in establishing the responsible payment culture that UK businesses need to thrive.



VINCE CABLE

**Secretary of State for Business,
Innovation and Skills**



MATTHEW HANCOCK

**Minister of State for Skills
and Enterprise**

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Summary

Prompt payment in the Public Sector

- We agree with respondents that more can be done to make the public sector a beacon of best practice on prompt payment. We are already taking forward a range of proposals following the work led in this area by Lord Young. These include a requirement that 30 day payment terms are passed down all public sector supply chains and that the contracting authorities make public and transparent reports on their late payments. In addition, all new procurement opportunities will be available in one place. Legislation on these measures will come into force later in the year.
- We will bring forward though legislation, when Parliamentary time permits, a number of further reforms to streamline procurement and improve public sector payment practices, including:
 - Requirements for public authorities to accept e-invoices (subject to further consultation on scope)
 - Requirements for public authorities to run timely and efficient procurements (subject to further consultation on scope)
 - Greater powers for Ministers to investigate complaints raised by the Cabinet Office's 'Mystery Shopper' scheme

Incentivising fair, transparent, payments practice

- There was strong support amongst respondents for increasing transparency on payment practices. We will therefore work with businesses and business organisations to develop a new, robust reporting framework that has useful content and is structured in a way that is genuinely helpful to suppliers and customers.
- In order to give force to the reporting framework, we intend to give it a legislative underpinning when Parliamentary time permits.

Strengthening the Prompt Payment Code

- We will work with the Institute for Credit Management and businesses to consider how the Prompt Payment Code can be strengthened. This will include looking at what further action we can take to increase awareness of the Code and encourage more businesses to sign up, building on last year's work with FTSE 350 companies. We will be looking in more detail at various proposals made by respondents to increase the accountability of signatories. We will also be working with the Institute for Credit Management to publicise more examples of good payment practice.
- We will not however be further pursuing the possibility of an 'upper tier' of the Code which received only limited support from respondents.

Length of Payment Terms and Sector Based Approaches

- We do not intend to introduce a maximum legal payment period at this time. We are persuaded by the limited support the proposal received from respondents and the strength of the arguments advanced against it, notably the extent to which accepted payment practice varies across the economy.
- We will instead be working with industry bodies and business stakeholders to promote sector-based approaches to the development of advice and codes of best practice. These will build on the example of recent good progress made in the construction sector. However, should we be unsatisfied with progress we are prepared to look again at a legislative approach.

Credit Information and Credit Management, and Use of Technology

- We will work with trade bodies and associations to raise awareness of the training opportunities that are available to smaller businesses to inform their staff of how best to access and manage sources of credit information. This will include work to raise awareness of the potential benefits of adopting financial and payment management technologies.
- The British Business Bank and ICAEW are working with small business groups and the finance industry to produce a guide to accessing finance for smaller businesses and their advisers. This will include advice on good credit management practice.
- As noted above, to ensure the public sector leads by example, we will introduce measures to require all public authorities to accept e-invoices.

Alternative Finance Options

- We are keen to address any barriers that make it difficult for smaller businesses to manage their working capital requirements. There was strong support amongst respondents who answered the questions on alternative finance for removing contractual barriers to ensure that those companies that may benefit from access to alternative finance options, such as invoice finance and factoring, are able to do so. We therefore intend to introduce legislation to tackle contractual barriers such as bans on assignment when Parliamentary time permits.
- The British Business Bank will maintain its commitment to supporting the development of alternative sources of finance. The Bank will also promote better information in the market, building confidence among smaller businesses in their understanding of the finance options available.

Introduction

1. The discussion paper on 'Building a Responsible Payment Culture' was published on 7 December 2013. It asked for views on whether more steps are needed to deal with situations where companies do not pay their invoices to suppliers within the agreed payment terms or where companies use their dominance and bargaining power to force smaller businesses to accept unfavourable payment terms. The closing date for responses was 31 January 2014.
2. Over 100 responses were received from a wide variety of businesses, representative bodies and professional associations - a full list is at Annex A. This document summarises what respondents told us and the steps the Government now intends to take.
3. Where we cite proportions of respondents in this document, (unless otherwise stated) we refer to the proportion of respondents to the relevant question, rather than the total number of respondents, most of whom did not answer every question. A number of respondents did not directly address any of the specific questions asked in the discussion paper, but their views on the broader policy issues raised have nevertheless been taken into account in the Government's consideration of next steps.
4. A copy of the discussion paper can be found for reference at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/273436/bis-13-1234-building-a-responsible-payment-culture.pdf

Devolution

5. The devolution position on the matters discussed in this document inevitably varies due to the range of issues discussed and the different types of step the Government now intends to take. We will continue to engage with the Devolved Administrations as appropriate on the full range of measures that seek to improve payment practice, transparency and access to finance.

Overview of Responses

Prompt Payment in the Public Sector

6. The public sector in the UK spends £230 billion on goods, services and works to deliver public services. It creates liquidity in the economy and is in a powerful position to set an example by its behaviour. It is therefore vital that public bodies apply the highest standards to their payment practices.
7. As set out in the discussion paper, the public sector is already subject to legislation that entitles suppliers to charge interest on late payments after 30 days. Since 2010 Government policy has been that all central Government departments and their agencies should pay at least 80% of undisputed invoices in 5 days and report on their performance against this target. Central Government departments also require their prime contractors to pay their suppliers within 30 days.
8. Furthermore, specific measures have been put in place for Government construction contracts. Construction procurers in central Government departments, their agencies and Non-Departmental Public Bodies are required to ensure that their contracts with suppliers either provide for project bank accounts (PBAs) or include a contractual requirement to pay to Tier 3 of the supply chain within 30 days.
9. However, there is recognition in Government that more can be done to improve public sector procurement to ensure prompt payment to suppliers throughout public sector supply chains and to set an example of best practice.

Questions Asked

10. The discussion paper asked respondents the following questions regarding prompt payment in the public sector:
 - **Question 1: Do you agree that failure to issue purchase orders for public contracts in a timely fashion is a problem and has caused delays in payment? What measures could Government introduce to ensure that this does not happen? How could this be achieved simply and effectively?**
 - **Question 2: Do you think any specific changes or measures could be introduced to make it easier for suppliers to complain or change interest when they are paid late by public authorities?**

Views Received

11. There was broad agreement among respondents that further measures should be taken to improve public sector procurement processes. We received a number of suggestions from respondents who indicated that failure to issue purchase orders in a timely fashion is, or could be, a cause of delays in payment. These suggestions included:
 - Simplifying the procurement process with a greater use of standardised contracts
 - Implementing an audit/reporting framework for public authorities to ensure transparency over public sector procurement practice

- Imposing a limit on the time between the provision of instructions to proceed and the issuance of a purchase order
- Allowing on-site work to commence on public sector contracts only after the issuance of a purchase order

12. A large number of respondents commented that a fear of damaging commercial relationships and losing future contracts prohibits many suppliers from complaining about late payment in public sector supply chains. A significant number of respondents also used their answer as an opportunity to express their concern that whilst payment terms between public authorities and Tier 1 suppliers is often exemplary, these prompt payment terms are not always passed on down the supply chain.

“Small businesses need confidence to charge interest and complain about late payments from public bodies. The fear amongst small businesses is that complaining about late payments will result in a loss of future work”.
Federation of Small Businesses response

“Public sector contracts which stipulate the payment terms that its suppliers should adhere to helps ensure prompt payment is driven down supply chains”. *Confederation of British Industry response*

13. We also received a number of suggestions of possible measures that could be implemented to ensure that suppliers are empowered to complain about poor payment performance on public sector works. These included:

- Introducing the automatic payment of interest penalties to suppliers for late payment of invoices by all public authorities
- Providing more education for smaller businesses on good invoice management practice and how to make complaints when they are paid late
- Ensuring that more training is given to public authority officials responsible for ensuring that invoices are paid promptly
- Implementing an audit/reporting framework for public authorities to ensure transparency over public sector payment performance
- Imposing financial penalties on public authorities that do not conform to mandated prompt payment practice

Government Response

14. The Government agrees that more can be done to ensure the public sector is an exemplar of good payment practice. Lord Young has been leading work on how the UK’s approach to public procurement can be improved more generally. As part of that work we are already taking forward a range of measures, including a requirement that 30 day payment terms are passed down all public sector supply chains and that contracting authorities make public and transparent reports on their late payments. In addition, all new procurement opportunities will be available in one place. Legislation on these measures will come into force later in the year.

15. We will bring forward though legislation, when Parliamentary time permits, a number of further reforms to streamline procurement and improve public sector payment practices, including:

- Requirements for public authorities to accept e-invoices (subject to further consultation on scope)
- Requirements for public authorities to run timely and efficient procurements (subject to further consultation on scope)
- Greater powers for Ministers to investigate complaints raised by the Cabinet Office's 'Mystery Shopper' scheme

Incentivising Fair, Transparent Payments Practice

16. Late payment is fundamentally a question of business culture. Although most companies say they value good relationships with their suppliers and seek sustainable supply chains as an important part of their business strategy, evidence suggests that large companies at the top of supply chains are amongst the worst late payment offenders.
17. One way in which businesses can be incentivised to alter their practices is by increasing transparency around areas of performance relevant to corporate reputation or commercial relationships. In the discussion paper, we therefore sought views on how transparency on company payment performance could be improved, suggesting in particular the introduction of a new reporting framework. We asked whether such a framework should be voluntary or mandatory and what information should be covered.

Questions Asked

18. The discussion paper asked respondents the following questions about incentivising fair and transparent payment practice:
- **Question 3: Do you agree that more disclosure of company performance on supplier payment would be useful? If so, do you agree that a voluntary framework would be an effective, proportionate response, or should a mandatory framework be introduced?**
 - **Question 4: Do you agree that if a new framework were brought in (whether voluntary or otherwise) it should include the elements described above? Should further elements be included?**
 - **Question 5: Are there any other measures related to transparency or disclosure that would incentivise companies to ensure that their supplier payments are managed fairly and efficiently?**

Views Received

19. There was broad support for a new reporting framework. Over 70% of respondents agreed that more disclosure on companies' payment practice and performance would be beneficial to businesses and encourage a change in culture towards better payment practices.

“The (actual) terms of credit are as much part of a transaction as the price at which goods and services are sold, and if a supplier cannot correctly estimate the cost of financing their working capital and securing payment, it may not always be possible to know whether they are in fact making a profit”. *Association of Chartered Certified Accountants response*

20. Of those respondents who agreed that disclosure requirements would be beneficial, around half supported a fully mandatory framework. Other respondents noted that costs of conforming to a mandatory framework could be too significant for smaller businesses, and so suggested that any new disclosure requirements should be mandatory only for larger businesses, or fully voluntary. Some respondents also

noted that previous requirements on companies to disclose their policy and practice on payment to creditors were recently removed on the basis that they had not proved to be well designed.

21. The areas of information that we proposed for inclusion in any new reporting framework were broadly welcomed as a starting point for further discussion. A number of respondents replied that the metrics for reporting on disputed invoices and codes of ethics would have to be more carefully considered if they were to be of real comparative use for businesses. A number of additional metrics that may be useful for businesses were suggested, including:
 - The average term of payments actually made by a company
 - A company's target payment terms
 - The value of invoices unpaid or disputed
22. Some respondents noted that the data suggested in the indicative proposal would not be readily available and would require costly systems changes to extract, especially for companies with multiple international subsidiaries.
23. A number of respondents suggested additional measures relating to transparency to promote fairer payment practices. These included a 'scoring' website on which buyers can be ranked according to their payment practices. However, other respondents were concerned that 'naming and shaming' may discourage companies from being open about their payment practices, and preferred measures to give greater public recognition to companies that consistently pay suppliers promptly instead.

Government Response

24. We recognise that there is a strong appetite for greater transparency around commercial payment policies and practices so that businesses know what to expect when entering into a contract. We also appreciate that 'naming and shaming' may well be counter-productive, and discourage companies from being open about their terms. We will therefore work with businesses and business organisations to develop a new, robust reporting framework that has useful content and is structured in a way that is genuinely helpful to suppliers and customers. In order to give force to the reporting framework, we intend to give it a legislative underpinning when Parliamentary time permits.
25. We will consult further with business stakeholders on the detailed content of the new framework, recognising that the benefits of greater transparency need to be balanced against the additional cost to businesses. We will fully consider the various suggestions for the basis of the framework that we received from respondents to the discussion paper, such as the use of 'comply or explain' requirements.
26. Furthermore, we fully recognise the points made by respondents regarding the case for differentiating between businesses of different sizes, and we intend to build these considerations into the future framework.
27. We will also design this new framework with a focus on the needs of suppliers and potential consumers, both in terms of the information it is to cover and the way that information is to be published. By the making the payment performance of both the private and public sectors more transparent, we will ensure that this information becomes open data, available to the wider public. In line with the Government's 'open

data agenda' this will give businesses and individuals the opportunity to access and present this data in a way that maximises its use for suppliers.

Strengthening the Prompt Payment Code

28. The Prompt Payment Code was established in December 2008 by the Institute of Credit Management (ICM) at the request of the Government. The Code gives companies the opportunity to commit to good practice in their supplier relationships, improving business cashflow and working capital throughout the supply chain.
29. The payment practices of a signatory can currently be challenged by filling in a form on the Prompt Payment Code website. This can include business organisations complaining on behalf of their members as well as suppliers themselves, and can be done on an entirely confidential basis – the details of the individual or organisation that brought the complaint will only be shared if the complainant agrees. When a challenge is raised, the ICM will contact the signatory for a response to the alleged breach of the Code and, if necessary, begin a process of mediation between the parties. Ultimately, if a signatory is found to be in breach of the Prompt Payment Code and unwilling to rectify their behaviour, they can be removed from the Code.
30. In the discussion paper, we suggested a number of measures to raise awareness of the Code and also to strengthen it. We suggested that one way the Code could better promote best practice may be by highlighting the various ways in which companies manage different stages of the payment cycle in a fair and effective way. We also suggested that the Code could be strengthened by encouraging challenge, and sought views on how this could be achieved.

Questions Asked

31. The discussion paper asked respondents the following questions about strengthening the Prompt Payment Code:
- **Question 6: How can the Prompt Payment Code better raise awareness of good practice? Would case studies of how companies manage different stages of the payment cycle be helpful in demonstrating how the Code principles can be applied in practice?**
 - **Question 7: Are there any steps that could be taken to encourage more businesses to identify breaches of the Code by signatories?**
 - **Question 8: What further measures would you like to see as either a signatory, or a supplier of a signatory, to give you confidence in the Code as a marker of good practice? In particular, would it be useful to ask for publication of the maximum payment terms offered by signatories?**
 - **Question 9: Should a new 'upper tier' be introduced to the Prompt Payment Code for signatories to agree to more stringent rules?**
 - **Question 10: Should businesses be offered incentives to sign up to an 'upper tier' if introduced? What would be an appropriate and effective incentive?**

Views Received

32. There was broad support for the Prompt Payment Code as a helpful initiative designed both to raise awareness of payment terms as a major issue for UK businesses and as a means to incentivise changes in corporate behaviour to encourage a more responsible and sustainable payment culture.
33. Many respondents agreed that there is still a lack of awareness of the Code amongst businesses and welcomed any awareness campaign. There was a broad consensus amongst those who replied that case studies which illustrate how the Code's principles should be applied in practice would be helpful. A number of respondents also welcomed any measures that would publically recognise signatories to the Code who display exemplary payment practices.

“More details should be provided to suppliers and to the PPC website, allowing more transparency into the process of extending payment times and therefore whether a ‘challenge’ is appropriate”. *Forum of Private Business response*

34. Many respondents commented that the Prompt Payment Code is perceived by businesses as lacking powers of enforcement, and that it is not clear that there are consequences if a signatory does not comply with the principles promoted by the Code. They suggested that this perception can limit the relevance of the Code to businesses. Therefore, a number of respondents suggested measures designed to encourage challenges by making the process more accessible and outcomes more visible, including:
- Creating a new independent and anonymous ‘whistle-blowing’ process
 - Publishing successful challenges on the website
 - Creating an anonymous register of payments complaints
 - ‘Name & shaming’ those companies that have not adhered to the Code’s principles
 - Introducing a robust audit scheme to ensure that signatories are complying
35. There was general agreement that publication of maximum payment terms offered by signatories to Prompt Payment Code would be beneficial. Of those that supported this measure, a number of respondents suggested further information that could be published in addition maximum payment terms, including:
- Average actual payment terms
 - Grouping of published payment terms by sector
 - Publication of the terms and conditions of a company’s standard contract
 - Publication of the contact details of a designated person in Accounts of each signatory to the Code
36. There was not widespread support for the introduction of an ‘upper tier’ to the Prompt Payment Code. Those who were critical of this measure noted that a division of the Code into ‘upper’ and ‘lower tiers’ might create confusion and discourage new signatories. There was a general agreement amongst all respondents that efforts should be focused on improving the Code as a whole before any possible introduction of an ‘upper tier’.

“The principle behind the proposal – dividing the signatories into good payers and very good payers – may encourage more businesses to apply for the ‘Upper Tier’. However, it may complicate the PPC and increase difficulties in making small businesses aware of the website”. *Federation of Small Businesses response*

37. There was a mixed response to the suggestion of providing incentives to signatories to enter an ‘upper tier’ of the Prompt Payment Code if such a measure were to be introduced. Those respondents who replied that there should not be any additional rewards noted that the value added to a company’s reputation should be sufficient incentive in itself. Those who indicated some support for incentives suggested additional benefits including:

- Corporate tax incentives
- Preferential access to public sector contracts
- Formal accreditations
- Access to grants for companies to improve systems to meet Upper Tier requirements

Government Response

38. The Government welcomes the impact made by the Prompt Payment Code and the general support for this initiative amongst UK businesses. We are looking at what further action we can take to increase awareness of the Code, and encourage more businesses to sign up, building on last year's work with FTSE 350 companies. We will be looking in more detail at various proposals made by respondents to increase the accountability of signatories. We will also be working with the Institute for Credit Management to publicise more examples of good payment practice.

39. While there is a clear wish to strengthen the Prompt Payment Code, the balance of responses suggests that businesses do not think this would be best achieved by creating different categories of signatory. Therefore we will not be considering further the possibility of an ‘upper tier’ of the Code, but will take forward work on how it can be strengthened as a whole. We will do this in close collaboration with the Institute for Credit Management. Work will be informed by further consultation with signatories, including in a series of workshops, and by drawing on the detailed feedback received from respondents. There will, of course, be some read-across to work on the proposed new reporting framework on payment performance.

Fines and Penalties

40. Late payment legislation already gives creditors a right to penalty payments in the event of late payment. They have a right to charge:

- A statutory interest rate calculated as the Bank of England reference rate plus at least eight percentage points;
- A fixed charge to cover debt recovery costs of £40, £70 or £100 depending on the size of the debt; and
- Additional reasonable costs incurred.

41. However, although businesses have these rights very few currently choose to enforce them, generally because of concern about the impact on future commercial relationships. This is a problem because if statutory penalties are to be effective suppliers need to be prepared to use them.

42. In the discussion paper, we sought views on whether greater penalties or fines should be introduced to incentivise more suppliers to assert their rights and provide a more serious deterrent to late payers. We also asked for views on whether it would be helpful for penalties or 'fines' to be collected by Government or a trade association rather than paid directly to the creditor as a means of alleviating businesses' fears of damaging their commercial relationships with their customers.

Questions Asked

43. The discussion paper asked respondents the following questions about fines and penalties for late payment of invoices:

- **Question 11: What are the barriers to claiming interest on late payment? What could be done to encourage more businesses to claim interest and late payment charges where appropriate and create an environment in which this is considered the norm?**
- **Question 12: Do you believe that further penalties payable to creditors would be a useful means of discouraging late payment? If so, how do you think that they could be implemented given suppliers' inevitable concern not to damage future commercial relationships? Do you have views as to how any such additional penalties should be framed or the level at which they should be set?**
- **Question 13: Do you see advantages in a third party (which could be Government or another body, such as trade associations) playing a more direct role in the collection of penalties for late payment? If so, how could such a system be implemented effectively given the challenges discussed above?**

Views Received

44. Almost all respondents who replied to these questions agreed that fear of damaging a commercial relationship is the principle and fundamental reason why businesses are reluctant to take measures to seek compensation for the late payment of invoices.

“Supply chain members such as Tier 2 specialist contractors can of course refuse to accept such terms and report poor practice, particularly where it contravenes agreed policy; however, this can be extremely difficult for SMEs that do not have the knowledge, resources or confidence to challenge the very businesses they rely on for their livelihood”. *National Specialist Contractors Council response*

45. A number of respondents suggested other barriers to claiming interest and penalties for the late payment of invoices, including:

- A lack of awareness amongst small businesses of existing legislative protections and rights
- The time and cost to businesses of chasing payment of these penalties
- A failure amongst companies to ensure that their standard contracts include provisions that explicitly set out a process for claiming interest and penalties for late payment of invoices

46. However, there was not a consensus from respondents for introducing further penalties for late payment of invoices payable to creditors. A significant number of respondents replied that increasing existing payable penalties or introducing new payable penalties would not help tackle the barriers that prevent businesses from claiming these penalties, and so would not lead to a change in payment culture. Few respondents suggested how such fines should be implemented. Of those respondents who commented on the question of how any further penalties could be levied, most (although only 7 respondents in total) supported a fine collected by a Government body. Some others supported the mandating of automatic payment of higher interest charges for late payment of invoices.

“Further penalties may have some effect but until the root cause of why a business does not apply such measures is resolved, they will not apply them at whatever level they may be set”. *Forum of Private Business response*

47. There was almost no support for the involvement of trade bodies or associations in the collection of penalties for late payment. A number of respondents noted that maintaining the anonymity of claimants would be very difficult under such a system.

48. There was some support for Government playing a direct role in the collection of payments, either through the creation of a new ‘late payments ombudsman’ or through the tax system. However, a significant number of respondents remained critical of the involvement of any third party.

“It is difficult to see how a trade association would be able to have a more direct role without some disclosure of the details of the suppliers involved, even indirectly through details of invoice amounts and dates. This would undermine the objective of taking such an approach in the first place”. *Asset Based Finance Association response*

Government Response

49. It is clear from the responses that we have received to the discussion paper that a fear of damaging the commercial relationship and losing future business is the principal reason for reluctance amongst UK businesses to pursue penalties and interest charges for late payment. We accept the clear view of the majority of respondents that Government should focus on pursuing measures to tackle this barrier.
50. Whilst it is apparent that some businesses would welcome any measures directed at dissuading companies from paying late, including increasing payable penalties, we agree with the widely held view that this would be unlikely to tackle the underlying causes of the culture of late payment. It appears clear from the responses to the consultation that even the possibility of a significantly increased penalty payment would be unlikely to outweigh suppliers' concerns about the potential negative impact on future commercial relationships of making a claim. Therefore we do not intend to increase existing penalties or introduce new penalties for the late payment of invoices at this time.
51. There was also no strong support for the involvement of a third party, including Government, in the collection of penalties. We accept the argument that any moves in this direction would risk moving away from the principle that penalties should remain visible so that both creditors and debtors can be confident that the full and correct charges have been made. We also accept points made by respondents about the practical implications of any significant change in this area, both in terms of the need to identify and provide funding for any enforcement body and the fact that a supplier's concern regarding impact on future relationships would still need to be overcome in order for any complaint to be made. At this stage, it is right that we should instead focus on working with stakeholders to implement measures designed to ensure that creditors feel confident to claim existing penalties in a transparent manner.

Length of Payment Terms

52. Businesses are currently able to agree payment terms that are longer than the default of 30 days (which, as set out in legislation, applies when no terms have been explicitly agreed) and longer than 60 days so long as they do so freely and the terms are not 'grossly unfair' to the supplier. As yet, however, suppliers have been unwilling to bring cases to challenge payment terms on this basis, perhaps due to a lack of certainty as to when a court would consider terms to be 'grossly unfair'.
53. We asked for views both on the length of payment terms in themselves, and on what 'grossly unfair' should mean in practice. We noted that any solutions must acknowledge the varied reality of commercial relationships - between different sizes of company and in different sectors with different standard payment practices.
54. We also asked for views on the possibility of a statutory maximum payment term – perhaps set at 60 days – or a framework for the agreement of different maximum payment terms in different sectors. Furthermore, we asked whether, separate to a maximum payment term, companies should have to consult with their suppliers before implementing terms over 60 days and publish the outcome of such a consultation alongside their decision.

Questions Asked

55. The discussion paper asked respondents the following questions regarding the length of payment terms:
- **Question 14: Should businesses remain able to agree payment terms that are over 60 days? What impact would a hard limit on payment terms have? How would this affect different sectors?**
 - **Question 15: Under what circumstances do you think that a payment period should be considered to be 'grossly unfair' to the supplier? How could this be defined more clearly? Would it be possible to agree one set of principles for all transactions or would differentiated approaches be more appropriate, for instance on a sectoral basis?**
 - **Question 16: If businesses remain able to agree payment terms over 60 days, should they have to consult with suppliers and state publically that they are doing so, or publish reasons explaining why? Should this apply to all businesses or only large companies? How would this help or hinder your business?**

Views Received

56. We received a mixed response to the suggestion of a maximum payment term. On balance, more respondents were critical of such a measure than supported it. A number of those who supported the introduction of a maximum payment term suggested a lower maximum term of 30 days. Many of these respondents cited overseas regimes as possible templates for a statutory maximum payment term.

“A poll of our members revealed that while 28-30 days is the preferred term, the terms for payment do differ widely between businesses, from upfront payment to over 90 days. This suggests that businesses should be able to retain flexibility in agreeing payment terms”. *British Chambers of Commerce response*

57. Many of those respondents who were critical of introducing a maximum payment term noted that there is a risk that a maximum term of 60 days may result in 60 days becoming the default payment term in all sectors, including those where payment under 60 days is currently the norm. They also replied that the diversity of practices in different sectors would make it very difficult to establish any single maximum payment term.
58. Although there was general agreement that it would be helpful to have further clarity on when payment terms should be considered ‘grossly unfair’, there was no consensus on what form this clarification should take. Indeed, almost 25% of respondents to this question replied that it would not be possible to provide one definition that is applicable across all sectors of the UK economy.

“Few companies will want or feel able to challenge payment terms through the judicial process and as a result the definition of ‘grossly unfair’ is untested and unclear. Providing greater clarity would give businesses more confidence when negotiating payment terms”. *Confederation of British Industry response*

59. On balance, most respondents were supportive of measures to ensure greater transparency in instances where businesses agree to payment terms that are longer than 60 days, although some respondents suggested that this should only apply to larger companies.
60. Whilst there was general agreement that companies should be open and honest about their payment terms, there was limited support (less than 20% of all respondents to the discussion paper) for legislative measures to require companies to consult ahead of agreeing to payments terms exceeding 60 days due to the difficulties of maintaining appropriate commercial confidentiality under such a requirement.

Government Response

61. In the light of responses, we will not be taking forward the proposal to introduce a maximum payment term at this time. However, extended payment terms are clearly a problem for a large number of businesses. We will therefore be working with industry bodies and business stakeholders to promote the development of advice and codes of best practice that are commercially and sectorally relevant. Whilst we believe that a business-led approach, if it works, will lead to the best outcomes for UK industry, we are prepared to look again at legislative approaches if this fails.
62. For now, we believe that sector specific problems are best tackled by working with those sectors. An example of this is the work of the Construction Leadership Council, established last year to take forward Construction 2025, the Industrial Strategy for Construction. A number of construction trade bodies are represented at the Leadership Council which has published a construction supply chain payment charter

which commits signatories to a maximum of 45 day payment periods by January 2015, ramping down to 30 days by 2018. The charter also contains a commitment to remove retentions by 2025. By looking at the issue from a sector perspective, the Leadership Council has been able to suggest solutions which work with the custom and practice of the industry and are therefore more likely to be successful.

63. We therefore propose to work with sector Councils established under the Government's Industrial Strategy to consider how this approach can best be rolled out in other parts of the economy.
64. We have also concluded that the potential benefits of requiring advance consultation of suppliers before seeking payment periods exceeding 60 days are likely to be outweighed by the practical disadvantages. In particular, as with the issue of a maximum payment term, such a requirement would be difficult to reconcile with the variety of commercial payment practices, and could cause particular difficulties in the event that terms need to be agreed or changed at short notice. We will, however, continue to consider the question of advance consultation when pursuing sector-based approaches.
65. We will work with Devolved Administrations as this policy develops, taking the territorial impact of such proposals.

Sector Based Approaches

66. Analysis produced for Construction 2025, the Industrial Strategy for construction, concluded that late payment is a key obstacle for small businesses in this sector. The Construction Leadership Council has worked with the Institute of Credit Management to develop a construction supply chain payment charter. In the discussion paper, we asked for views on the dispute resolution framework which is set out in the Construction Act.
67. Companies operating within any particular sector are more likely to have a sense of existing problems in that sector. Therefore we also sought views on whether sector-based approaches to tackling late payment, either voluntary or statutory, could play a greater role in promoting good practice.

Questions Asked

68. The discussion paper asked respondents the following questions about sector based approaches:
- **Question 17: Are there simple steps that might be taken to make the construction adjudication process quicker, cheaper or both?**
 - **Question 18: What role, if any, could industry or sector bodies play in identifying and promulgating good contractual practices within their sectors and adjudicating on disagreements? Do you see particular sectors as priorities for action? How might Government facilitate this?**

Views Received

69. A number of respondents said that smaller businesses in the construction sector can be dissuaded from using adjudication because the process is too long. That said, most respondents did not directly suggest steps that could be taken to improve the adjudication process, though some did suggest that Government might set up an independent body or division of the courts for small claims.
70. The small number of respondents who did respond directly to the adjudication question suggested:
- Allowing more evidence to be submitted electronically
 - Doing more to standardise adjudication fees
 - Providing more education for small businesses on the adjudication process
71. Most respondents agreed that trade bodies do have a role to play in identifying and promulgating good payment practices in their sectors, as well as playing a greater role in helping their members tackle late payment. It was suggested by different respondents that this role might include collection of data, establishing charters, offering advice and providing arbitration services.

“Industry and sector bodies are powerful and have strong communication channels with their members. These channels should be exploited to communicate good practice and raise awareness of the remedial measures available”. *Institute of Credit Management response*

72. A number of respondents suggested that Government could facilitate these services by:

- Establishing independent bodies to oversee arbitration
- Creating online ‘hubs’ for payment advice
- Co-ordinating consultations and action groups to tackle problems in particular sectors
- Setting a good example through its own supply chains

73. Some sectors such as manufacturing and retail were identified as priorities for action. However, the high proportion of responses that were from the construction sector further reinforce the significance of late payments in the construction industry.

Government Response

74. It is clear that there are significant issues concerning prompt payment (including the issue of retentions) in the construction sector. Whilst we recognise that there is concern amongst some businesses about the time and costs of the construction adjudication process, it is still generally quicker and cheaper than litigation. It is therefore important to retain the process to ensure that disputes can be openly and fairly settled between both parties.

75. Recent amendments to construction contracts legislation have the intention of better crystallising the dispute at hand. It is hoped that, in certain circumstances, this will make the adjudication process quicker and less costly. We have also taken steps to ensure that the allocation of the costs of an adjudication are more equitable.

76. More generally, as noted in the previous section of this document, we have concluded that we should seek to further promote sector-based approaches to tackle late payment, building on the good example of the work in this area by the Construction Leadership Council. In taking this work forward we will have particular regard for the issues raised by respondents relating to the important role of trade bodies in providing advice and examples of best practice to their members.

77. We also entirely agree with the point raised by respondents that the public sector has a particularly key role to play in terms of promoting prompt payment – hence the range of measures we intend to pursue in this area discussed earlier in this document.

Credit Information and Credit Management

78. Most business to business transactions involve the provision of goods and services on credit. While financial institutions use complex algorithms and multiple data sources to make credit decisions, small businesses may not have a member of staff with a specific responsibility for credit control.

79. However, it is still important that smaller businesses take reasonable steps to assess the creditworthiness of their potential customers. Therefore we asked about what information might help businesses make more informed decisions, and what steps might be taken to provide smaller businesses with access to credit information and management data.

Questions Asked

80. The discussion paper asked respondents the following questions about credit information and credit management:

- **Question 19: Do you think that more information on whether companies have a history of late payment would help suppliers negotiate better terms when doing business?**
- **Question 20: What can businesses, data hosting platforms and Government do to facilitate greater transparency?**

Views Received

81. Over 75% of respondents to the first question agreed that more information on companies' history of payments would be beneficial for businesses before entering into a contract. However, amongst those who agreed, some respondents noted that some small businesses may need guidance on how to interpret such historical data correctly.

“Provision of information is only half the battle. The small businesses who might benefit from it need to be in a position to understand the information, and also to allocate the resource to accessing it”. *Association of Chartered Certified Accountants response*

82. A number of respondents replied that more information would not help businesses to negotiate better terms. Some respondents noted that information on companies' credit history is already available from credit reference agencies, while other respondents suggested that small businesses are not in a position to negotiate better terms in a commercial contract with a large company, even if they are aware of their payment history.

83. We received a number of suggestions regarding what can be done to facilitate greater transparency of the payment of invoices, including:

- Providing more data on the Prompt Payment Code website
- Working with credit reference agencies to ensure greater accessibility to credit histories

- Promoting the use of e-invoicing hubs

Government Response

84. We agree that the more information that a small business has before it enters a commercial contract, the more empowered it is to ensure it enters into that contract on equal terms. However, we also recognise that there is already a great deal of information available and that the problem can be a lack of knowledge amongst businesses of where to find this information and how best to use it.
85. We are pleased that a number of respondents commented on the programmes that they already offer to help smaller businesses bridge this skills gap. For instance, the British Chambers of Commerce noted that many regional chambers run courses to inform members how to deal with credit checks and payment disputes. Similarly, the Confederation of British Industry highlighted that there are business to business initiatives which can help in supporting small and medium-sized businesses in a similar way. We welcome these initiatives and will look to work with such bodies to raise awareness of these opportunities.
86. Furthermore, the British Business Bank and the ICAEW are working with small business groups and the finance industry to produce a guide to accessing finance for smaller businesses and their advisers. This will include advice on good credit management practice.
87. As noted earlier, we also intend to introduce a new, robust reporting framework on payment practices to increase the information readily available to suppliers on companies' payment performance.

Use of Technology

88. New technology can help small businesses manage their finances and payments efficiently. In particular, electronic invoicing can make the payments cycle more efficient and speedy and reduce the administrative errors in invoices that often lead to late payment. Furthermore, electronic invoicing platforms are increasingly offering additional financial services like supply chain finance that can give small businesses more financing options.
89. However, we recognise that, whilst some businesses are quick to adopt those technology based solutions that can assist their finance management, take up can be slow amongst many small businesses. Therefore, we sought views on what more can be done to help those businesses who would benefit from these technologies access them.

Questions Asked

90. The discussion paper asked respondents the following about the use of technology:

- **Question 21: What prevents small businesses from using technology services to help them with financial management and payment? What could be done to encourage greater take up?**

Views Received

91. Most respondents on this subject noted that a lack of resources (over 50% of respondents to this question cited costs and/or other resources such as time and skills) is the principle barrier to small businesses using more technology services to help them with financial management and payment.
92. Respondents suggested a number of measures to address the cost of introducing such technologies, including directed grants, loans and tax solutions. A number of respondents also suggested that education programmes and mentoring networks designed to increase awareness of the potential benefits of adopting new business technologies could be delivered through institutions such as business associations.

Government Response

93. We believe that it is important that the public sector displays best practice in using technology in its procurement processes. Our aim is for central Government to use electronic invoicing for all transactions. As stated earlier, we intend to introduce measures to accelerate the use and acceptance of e-invoicing in the public sector to harness the associated benefits and savings.
94. We are pleased that a number of respondents to the discussion paper were technology platform providers who explained the services that they can offer to small businesses to help them improve their payment systems and financial management. This market response suggests that developers are doing more to improve the interoperability and accessibility of these technologies for small businesses. We intend to work with trade bodies and associations, such as the Institute of Credit Management, to raise awareness amongst businesses of the potential benefits of adopting these technologies.

Alternative Financing Options

95. It would be a significant benefit for many small businesses to understand and have more confidence in using the full range of options now available for managing cashflow as a normal part of doing business. Some of the most common finance options available to small businesses to manage cashflow beyond loans and overdraft facilities are:

- Factoring and invoice discounting – where a business effectively gets a cash advance against payments due by selling or borrowing against all or part of its debtor book;
- Asset Based lending – where funding is secured against an asset of the business such as property, machinery or stock; and
- Supplier finance (also called supply chain finance or reverse factoring). This is where a customer puts facilities in place that mean that suppliers can claim payment immediately from a third party finance provider. The supplier gets the whole value of the invoice less a discount that is based on the customer's credit rating. The customer then settles with the finance provider when the payment is due.

96. In the discussion paper, we asked what can be done to increase awareness of these financing options, and lower the costs to small businesses of accessing them. We also asked whether small businesses are experiencing difficulty in accessing some of these alternative financing options as a result of contractual terms imposed on suppliers by more powerful customers.

Questions Asked

97. The discussion paper asked respondents the following questions regarding alternative financing options:

- **Question 22: Do small businesses have adequate access to the information and support they need to understand the external financing options available to them? What would help raise awareness of these options?**
- **Question 23: How could working capital options be made cheaper and more accessible to small businesses?**
- **Question 24: Would removing contractual barriers to selling invoices (e.g. as a result of a ban on assignment) be helpful to small businesses by increasing their access to services such as factoring and invoice finance?**

Views Received

98. In general, it was felt that small businesses do not currently have a full understanding of the financing options that are available to them and that a negative perception of such options prevails amongst many smaller businesses. It was noted that even when they are aware of the possibility of options such as factoring and asset financing, small businesses do not always know where to access impartial advice on how to utilise these options. A number of respondents suggested that a single source of information on financing options for small businesses would be helpful.

“Awareness and understanding amongst growing businesses of these finance options is low. In particular, invoice factoring can carry negative connotations, with businesses fearing they will seem to be unable to manage their finances”. *Confederation of British Industry response*

99. A number of respondents suggested that the best way to make alternative financing options cheaper and more accessible to small businesses is to focus on addressing late payment of invoices. It was noted that an improved cashflow would lead to a stronger credit rating for suppliers, which could allow them to access credit and financing on cheaper terms. Some respondents also suggested that Government (or the British Business Bank) could provide targeted funding solutions to reduce the costs of such financing options to small businesses.
100. A small number of respondents suggested that reducing the costs of such financing options may not be possible or advisable. They suggested improving education available to small businesses to enable them to understand which working capital financing options might be most economical for them.
101. A majority of respondents to the last question agreed that removing contractual barriers to selling invoices would help increase access to financing options such as factoring and invoice finance. Nevertheless, some respondents noted that further barriers, such as aversion to external financing amongst many small businesses and the costs of such options, may continue to discourage small businesses from accessing these financing options.

“Such barriers are an unnecessary restriction and are an articulation of the disparity of power in a commercial relationship. It is notable that they are usually found in standard form contracts drafted unilaterally by large customers”. *Asset Based Finance Association response*

Government Response

102. We appreciate that, for some businesses, invoice and working capital financing may not be appropriate. Nevertheless, we believe that more can be done to increase the availability of such options to those who would benefit from them. In particular, we agree with respondents that action should be taken to remove unhelpful contractual barriers to the provision of finance. We therefore intend to introduce legislation to tackle contractual barriers such as bans on assignment when Parliamentary time permits.
103. We recognise that a better awareness and understanding of finance options would help smaller businesses to access appropriate finance solutions for their needs more effectively. This is why one of the objectives of the British Business Bank is to promote better information for smaller businesses on the finance options available to them in the business finance market, including by working in partnership with finance providers and advisors to smaller businesses.
104. Another of the British Business Bank’s key objectives is to help create a more diverse market for finance for small businesses with greater choice of financing options and providers. This is best reflected in its combined Investment Programme, which has a current portfolio of 10 commitments to 9 finance providers totalling £172m that support lending capacity of over £800m through a range of alternative

finance providers such as direct lending funds, peer to peer (P2P) lenders and supply chain finance providers. To date, over £280m of lending to smaller businesses has been supported as a result of these commitments, which also help to accelerate the development of the respective alternative provider models. Further commitments under the current Investment Programme will build on this lending capacity and support more diversity in the market.

Annex A – List of Respondents

Mr. Stephen Beales	Aizlewood and Casson
Dortech	Radley James
S&B UK	Walker Dendle
Graham Skinner	Industrial Ventilation Products Ltd
AFL Accounts	Construction Products Association
Atlas Risk	Hi-Spec Flooring
Underpin and Makegood	Building and Engineering Services Association
Mitchellson Formwork & Civil Engineering	Mr. David Purdy
Soundtex	Road Haulage Association
BDO LLP	Association of Ductwork & Allied Services
Lotinga Industrial Doors	Roehampton University
Redec Refurbishment	Bar Council
Ruttle Group	British Chambers of Commerce
Maurice Blackman	Mr. David Peden
Mr. Jim Beattie	Allsorts Engineering
Design Contract Flooring	Welsh Government (& CECA Wales)
Secgroup	Open Doors International School
Biswell Flooring Ltd	Roberts Flooring Contractors
Hadene	Institute of Credit Management

Bio-Diagnostics	National Specialist Contractors Council
University of Aberdeen	Neo Floors
Patricia Leighton	Monk Woodworking
Opex Resources	Chartered Institute of Civil Engineering Surveyors
Chartered Institute of Building	Trading Standards Institute
FeRFA: The Resin Flooring Association	APPG for the Roofing Industry
Knowledge Management and Transfer	Oxygen Finance
Institute of Practitioners in Advertising	High Resolution Consulting
Flourishing People	Electrical Contractors Association
ICAEW	North East Chamber of Commerce
SMAM Group	Engineering and Machinery Alliance
Confederation of British Industry	Recruitment and Employment Confederation
ACCA	Asset Based Finance Association
Association for Consultancy and Engineering	PA Geotechnical
Adrian Eves Joinery	Greater Manchester Chamber of Commerce
Floorcraft	BSI Group
Forum of Private Business	Door and Hardware Federation
Cheque and Credit Clearing Company Ltd	Institute of Business Ethics
Contract Flooring Association	Quadrant Contract Floorings
Highland Joinery and Glazing Contractors	

Reed Global	Mr. Ian Houston
Carillion	Leiths Group
National Federation of Roofing Contractors	MCT flooring
British Woodworking Federation	Financial Reporting Council
Lloyds Banking Group	Civil Engineering Contractors Association
Association of Technical Lighting and Access Specialists	HSBC
Builders Merchants Federation Ltd	Macgregor Flooring
Association of Professional Staffing Companies	Pilkington
Association of Interior Specialists	Andrew Engineering
National Federation of Builders	Professional Contractors Group
Payments Council	Construction Plant-hire Association
Mr. Ashley Smith	Federation of Small Businesses
Confederation of Construction Specialists	RBS
Satago Ltd	Taulia Inc
	UK National e-Invoicing Forum

How to get in touch

We are happy to continue to hear views on the policy direction set out in this paper as we move towards its implementation. Please do contact **latepayment@bis.gsi.gov.uk** clearly marking the subject of your email.

In exceptional circumstances we will accept correspondence in hard copy. If you need to submit a hard copy, please provide two copies to the Business Finance & Tax team, Business Environment directorate at the following address:

Business Finance & Tax
Business Environment Directorate
3rd Floor, Spur 1
1 Victoria Street
London
SW1H 0ET

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BIS / 14 / 793