

Association of Accounting Technicians response to the BIS call for evidence on the “Protection of Small Businesses when purchasing goods and services”

AAT RESPONSE TO DEPARTMENT FOR BUSINESS INNOVATION & SKILLS CALL FOR EVIDENCE RELATED TO THE PROTECTION OF SMALL BUSINESSES WHEN PURCHASING GOODS AND SERVICES

1 INTRODUCTION

- 1.1 The Association of Accounting Technicians (AAT) welcomes the opportunity to respond to this call for evidence from the Department of Business, Innovation & Skills regarding the “Protection of Small Businesses when purchasing goods and services” (condoc).
- 1.2 This response is being submitted on behalf of AAT’s membership and from the wider public benefit perspective of achieving sound and effective administration of business and consumer law.
- 1.3 AAT’s comments outlined in this response has been restricted to areas where it is felt that value could be added to the matter in hand and in particular to highlight aspects where AAT considers that further consideration is required.
- 1.4 AAT observations have predominantly been reserved to the operational elements of the proposals contained within the condoc along with the practicalities in implementing the measures outlined.
- 1.5 Furthermore, AAT’s observations reflect the potential impact that the proposed changes might have on MSBs many of whom employ AAT members or are represented by AAT’s operationally skilled members in practice¹.

2 EXECUTIVE SUMMARY

- 2.1 The condoc calls for evidence in respect of whether or not:
 - 2.1.1 the current legislative framework for the sale and supply of goods and services to micro and small businesses (MSBs) sufficiently protects them, or;
 - 2.1.2 there is a gap in the law.
- 2.2 Predicated on the assumption that there might be a gap in the law, the consultation (1.1, condoc) seeks:
 - 2.2.1 evidence on what the costs and benefits of applying certain consumer protections (3.25 to 3.29, condoc) to MSBs
 - 2.2.2 other options.

¹ AAT has over 4,100 members in practice (Figure correct as at 31 March 2015)

- 2.3 AAT supports the view² that utility service providers (utility companies) may not be operating as efficiently as other providers of goods and services (3.1, below).
- 2.4 In addition AAT acknowledges that there have been calls³ for the Government to give micro and small businesses protections similar to those proposed in the Consumer Rights Bill⁴ when it is enacted and comes into force. The protections would apply when these businesses make purchases of goods and services for use in their commercial activities.
- 2.5 The problems that arise appear to relate to large suppliers, for example utility companies (3.1, below) and AAT considers that an extension of consumer protection to encompass MSBs in general would not seem to be an appropriate or proportionate response as it would lead to another tier of administration and impose further onerous duties. For instance, a service provider was bound to offer a 14 day cooling-off period during which a trading customer could change their mind and rescind the contract, the time taken to administer the cancellation would be lost time for MSBs, as they are likely to be the goods and service providers.
- 2.6 Mindful of the observation made in 2.5 (above) AAT is of the view, that there is insufficient evidence to show the current system is not operating reasonably to justify making such changes.

3 RESPONSE TO CONSULTATION QUESTIONS

Question 1

What examples are there of problems with the current arrangements?

- 3.1 AAT acknowledges the issues identified in a Federation of Small Businesses (FSB) report⁵ published in March 2014, that utility companies may not be operating as efficiently as other providers of goods and services and this may be due to minimal competition in their respective markets.
- 3.2 Indeed, as part of an attempt to address the above issue the FSB is calling on the energy regulator to make utility suppliers publish their default tariffs for smaller business customers. It is also recommending that all regulators with powers to enforce consumer protection should be given the ability to protect businesses from the mis-selling of products or services.

² [Paragraph 2.5 of Federation of Small Businesses \(FSB\) report “Small businesses as consumers: Are they sufficiently well protected?”](#)

³ 3rd paragraph of Ministerial Foreword, page 3, condoc

⁴ <http://services.parliament.uk/bills/2014-15/consumerrights.html>

⁵ [Federation of Small Businesses \(FSB\) report “Small businesses as consumers: Are they sufficiently well protected?”](#)

- 3.3 In responding to question 1 AAT wishes to acknowledge that in markets where a greater level of competition exists, small businesses are often treated in a similar fashion to ordinary consumers. Indeed such practice is embedded into some newer-style business to business operators for example the Tradestation⁶ website states the following “within 12 months of purchase we offer to arrange repair or replacement of goods which fail due to faulty materials or workmanship” and a “Within 30 days of receipt, any unused item can be returned at your expense for a full refund”.

Question 2

Are these problems one-off examples, or are there problems which suggest trends, or structural issues, in certain sectors?

- 3.4 AAT considers that there is a trend for utility companies to be operating at a lower level of efficiency, compared to other sectors and as a consequence the issue is structural. An observation that, in AAT's view, has been supported by statistics cited in a recent Citizens Advice Bureau (CAB) report⁷ which provides the following evidence:
- 3.4.1 34% of all small businesses do not find it easy to compare energy prices and the suitability of contracts.
 - 3.4.2 8% of small businesses with a mains electricity supply have experienced problems with their supply in the last 12 months and this figure rises in rural areas.
 - 3.4.3 20% of small businesses that have experienced problems cite higher than expected bills and poor customer service as the causes.
 - 3.4.4 61% of all businesses experiencing problems with mains gas have complained.
 - 3.4.5 76% of small businesses that have had a problem with their internet or phone service have complained (this equates to 23% of all small businesses).
 - 3.4.6 31% of complainants were not satisfied with the outcome of their complaint.
- 3.5 The examples given in the FSB report (3.1, above) in respect of utility companies supports a longstanding widely held view that such industries tend to become monopolistic by virtue of the extremely high level of capital required in order to enter the market.

⁶ The Toolstation customer services web-page

<http://www.toolstation.com/messages/afterSalesSupport>

⁷ https://www.citizensadvice.org.uk/global/migrated_documents/corporate/the-concerns-of-small-businesses-as-consumers-in-regulated-markets-final.pdf

- 3.6 The above is further compounded by those already within the sector merging in order to reduce their operating costs through attainment of economy of scale.
- 3.7 It is AAT's view that the situations outlined in 3.5 and 3.6 are both structural issues within the supply-side of the provision of utilities. While AAT is confident that other non-utility examples exist AAT does not consider that MSBs consistently face the same conditions.

Question 3

Why are these problems not resolved through market mechanisms or current protections (including, for example: the ability to contract; trust, goodwill and supplier reputation or long-term supplier relationships; or the ability to switch supplier)?

- 3.8 The lack of sufficient information, such as published standard tariffs⁸, can lead to ill informed decisions being made by small business owners who, typically, work full time running their core business, and have limited time for making purchasing decisions.
- 3.9 The problems are not resolved through market mechanisms because:
 - 3.9.1 there is little or no competition
 - 3.9.2 whilst the ability to switch supplier might well exist there is often a perception amongst some purchasers that switching would provide low appreciable benefits
 - 3.9.3 purchasers may not have the information they need to compare suppliers.

Question 4

What examples are there of advantages with the current arrangements?

- 3.10 The advantage of "the current arrangements"(2.3, condoc) is that the Acts (2.2, condoc) afford some measure of protection for MSBs, namely:
 - 3.10.1 In respect of the sale of goods in exchange for money.

⁸ Para 4.23 of Small Businesses As Consumers: Are They Sufficiently Well Protected?
http://competitionpolicy.ac.uk/documents/8158338/8264594/fsb+project_small_businesses_as_consumers.pdf/f1ed4da5-14cf-4b80-a1d8-ff76a0781def

3.10.2 Where the ownership of goods is transferred after final payment is made (reservation of title).

3.10.3 Protection is provided in relation to contractual terms which seek to limit or exclude liability.

Question 5

Are these advantages one-off examples, or are there advantages which are ongoing, or which occur in certain sectors?

3.11 Taking into account that the advantages, as stated in response to question 4 (3.10, above), are embedded into existing legislation⁹ they are therefore of lasting and ongoing benefit.

Question 6

What features of the current arrangements are most beneficial to MSBs?

3.12 AAT considers that the protective element of The Supply of Goods Act 1979 (SoGA) which provides that ownership of goods only transfers when payment that has been made is particularly advantageous in that it reserves the supplier their right to retrieve goods in instances of non-payment.

3.13 Outside of the “current arrangements”, as set out in 3.10 (above), having access to relevant and up to date consumer feedback which is readily accessible over the internet is beneficial to MSBs, as it assists them to make informed decisions in respect of goods and services they are considering buying in.

Question 7

What features of the current arrangements are most costly to MSBs?

3.14 As a supplier, the cost of retrieving goods where payment has not been received may prove to be costly to MSBs.

⁹ Where the existing legislation is the “current arrangements” referred to in 2.2 condoc which are:
 The Supply of Good Act 1979 (“SoGA”)
 The Supply of Goods and Services Act 1982 (“SGSA”)
 Supply of Goods (Implied Terms) Act 1973 (“SGITA”)
 The Unfair Contract Terms Act 1977 (“UCTA”)

- 3.15 In addition, the high opportunity cost associated with the amount of time spent making purchasing decisions is very costly to MSBs. Indeed the staff within a small business is often working full time in order to maintain core business efficiency. As a consequence spending time researching which utility supplier to engage is unlikely to be a priority and will be further compounded by the lack of published tariffs in the energy sector.(see also 3.8, above)

Question 8

How familiar are MSBs with the current arrangements as described in Section 2?

Question 9

With examples, what types of MSB are affected by any issues identified with the current arrangements, in terms of their size (by employee number and turnover), the nature of their business activity and location of their business)

Question 10

What types of transactions are affected with possible reference to the goods or services purchased, the frequency of purchase, the size or volume of purchase, the characteristics of the seller?

Question 11

What has been the effect on the terms of trade for the MSB when making the purchase (or purchases) in question?

Question 12

What indirect effects have there been on MSBs, for example, in consequential impacts on trade or competitiveness?

Question 13

What other losses has the MSB suffered, for example, in time taken to resolve a problem?

Question 14

Or, what additional benefits has the MSB enjoyed as a result of the current arrangements, either as a purchaser, or as a supplier?

- 3.16 AAT has insufficient evidence to make meaningful comment in respect of questions 8 to 14.

Question 15

What types of problems are occurring with purchases? For example, are any issues identified mainly about problems of redress ie. refund or remedy?

Question 16

Or are they about disputes over contract terms, or related to unequal bargaining positions between two parties?

Question 17

What other types of problem might there be, if not related to remedy or contract?

Question 18

To what extent do MSBs negotiate contract terms as against accepting standard terms and conditions?

Question 19

To what extent do contracts for sales and supplies to MSBs tend to limit liability for breach of statutory protections regarding goods and services, or other breaches of contract?

- 3.17 AAT has insufficient evidence to make meaningful comment in respect of questions 15 to 19.
- 3.18 Accepting AAT's lack of empirical evidence anecdotal feedback from a small group of AAT's members in practice seemed to suggest that the relative bargaining positions between MSBs and their suppliers did not appear to be a general problem.
- 3.19 The recent and continuing rise in consumer power arising from the ability of consumers (both individuals and businesses) to access or share information over the internet e.g. comparison sites, feedback on products and suppliers (on Amazon) has assisted at least to some extent to help address the imbalance in power between MSBs and their suppliers.
- 3.20 As a consequence of the observations made in 3.18 and 3.19 above AAT is of the view that the private and small business sectors are operating reasonably efficiently.

Question 20

Do MSBs struggle to make effective purchasing decisions?

Question 21

If so, what are the reasons?

Question 22

How do MSBs approach different purchasing decisions? For example, do they approach the purchase of core items and non-core items differently?

Question 23

Do MSBs believe they have sufficient information when entering a contract with a larger supplier?

Question 24

If so, what steps can MSBs take to ensure this is the case?

Question 25

If not, what types of information, and to what extent, are MSBs lacking?

Question 26

Does the ability of MSBs to make effective purchasing decisions differ depending on the type of purchase?

Question 27

If so, how and for which types of purchases?

- 3.21 AAT has insufficient evidence to directly respond to the questions posed and as a consequence the response provided is of an anecdotal nature.
- 3.22 While most small businesses have at least a similar level of expertise as that of a domestic customer when purchasing products and services due to time constraints and other countermanding demands, they are far less likely than a large business to have staff with a specific procurement role.
- 3.23 A small business will typically have relatively low requirements for products and services that are not directly linked to its core trade, and often do not think they will benefit significantly by spending time to choose their ideal utility provider.

- 3.24 There is little doubt that MSBs in many instances do not have the full information available to them when entering into contracts with certain larger suppliers, such as utility companies (3.9.3, above). In the case of utility providers the lack of transparency over prices could be addressed by subjecting the providers to legislation similar to the 2003 Communications Act. Whereby, utility providers were mandated to publish their tariffs.
- 3.25 As a direct consequence of the observations made in 3.22 and 3.24 AAT considers that MSBs will struggle to make purchasing decisions with the same degree of sophistication to that available to larger businesses making the supply

Question 28

How are the current arrangements reflected in the business models of suppliers, both other MSBs and larger firms?

Question 29

Would different rights and remedies for MSBs affect the business models of suppliers, both other MSBs and larger firms?

Question 30

Would it be costly for suppliers to distinguish between MSBs and other customers?

Question 31

How would firms supplying MSBs respond to changes in the rights of MSBs?

- 3.26 AAT lacks access to the data necessary to comment on questions 28 to 31.

Question 32

What might the benefits be of applying any of the consumer protections set out in Part 3 to MSBs?

Question 33

We are interested in views, with supporting evidence, on any of the key protections. In summary these are:

- Rights and remedies in relation to contracts for goods;
- Rights and remedies in relation to contracts for services;
- Rights and remedies in relation to contracts for digital content;
- Terms limiting liability for key protections being automatically non-binding;
- Right to challenging certain terms as unfair;
- Requirements to provide certain information before a contract is made;

- Right to withdraw from distance and off-premises contracts.

Question 34

Alternatively, is there evidence that regulating MSBs with consumer legislation might have unintended consequences eg. Chilling effect on the willingness of firms to enter contracts or costs associated with their being less flexibility in contracts etc?

- 3.27 AAT has declined to respond to questions 32 and 34 and submits the following observations in respect of question 33:
- 3.28 On balance AAT considers that the rights and remedies in relation to contracts for goods appear to be working reasonably well, as discussed in 3.7 (above).
- 3.29 The rise in consumer power as a consequence of the sharing of information across the internet (3.13 and 3.19, above) as set out earlier in our response appears to encourage providers to deliver an enhanced level of service.
- 3.30 In terms of contracts for services (particularly in respect of large utility providers), as discussed in 3.1 (above), AAT considers that further protection is required to ensure that consumer-MSBs are provided with sufficient relevant information when making purchasing decisions.

Question 35

If problems arise, to what extent are MSBs also the suppliers and what are the costs to MSBs as supplier of extending consumer protection provisions to MSBs?

Question 36

Are there any benefits or costs of having rights for MSBs aligned with those for consumers but not with other businesses?

Question 37

What other approaches could the Government take to protecting MSB rights?

Question 38

Does an extension of rights need to be applied on a universal basis ie. equally to all MSBs?

Question 39

Or should it be targeted at micro businesses only, or other specific types of MSB?

Question 40

Should any additional protections apply to certain types of transaction only?

Question 41

How is the option to limit liability in the current arrangements used? Is it a useful option?

Question 42

How would MSBs – and their suppliers – react if the option to limit liability was removed in all purchases?

Question 43

What impact on enforcement might there be if any of the consumer rights set out in Part 3 were applied to MSBs?

- 3.31 Whilst not responding specifically to individual questions, generally the problems that arise appear to be related to the large suppliers, in particular the utility companies. If consumer protection provision were extended on a universal basis to MSBs, additional time cost would be incurred.
- 3.32 As observed earlier in our response document (3.24, above), AAT is of the view that if the 2003 Communications Act is a model of best practice that could be replicated across all regulated industries. The benefit of such an action would be the introduction that the industry regulator treats micro businesses like domestic consumers other than where there are clear reasons not to. This would give a fairer level of consumer protection to these firms.

4 CONCLUSIONS

- 4.1 AAT supports the view that utility providers may not be operating as efficiently as other providers of goods and services (3.1, above).
- 4.2 Utility companies are not regulated under the 2003 Communications Act and are not required to publish their tariffs (3.8, above).
- 4.3 It is the view of the AAT that utility companies could be similarly required to publish their tariffs. A rise in consumer power has arisen due to the sharing of information by consumers on the internet (3.19, above) which has helped introduce a level of transparency into the provision of utilities to MSB.
- 4.4 The high opportunity cost of time spent making purchasing decisions may influence decision making culminating in ill informed decisions (3.15, above).

4.5 The problems that arise appear to be related to large suppliers, in particular the utility providers (3.1, above). However, the extension of consumer protection to MSBs would not seem to be appropriate as:

4.5.1 It would impose onerous duties for MSBs which provide goods and service.

4.5.2 AAT remains to be convinced that the current system is not operating reasonably well.

5 ABOUT AAT

5.1 AAT is a professional accountancy body with over 49,800 full and fellow members¹⁰ and 78,400 student and affiliate members worldwide. Of the full and fellow members, there are 4,100 members in practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

5.2 AAT is a registered charity whose objects are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6 FURTHER ENGAGEMENT

If you have any questions or would like to consult further on this issue then please contact AAT at:

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¹⁰ Figures correct as at 31 March 2015