# Small Business Commissioner: Policy on Secondary Legislation - response form

The consultation is available at: [www.gov.uk/government/consultations/small-business-commissioner-process-for-handling-complaints](https://www.gov.uk/government/consultations/small-business-commissioner-process-for-handling-complaints)

The closing date for responses is **7 December 2016 at 11:59pm**.

Please return completed forms to:

**Tinu Fagbayi**

Small Business Commissioner Secondary Legislation

Department for Business, Energy and Industrial Strategy

1 Victoria Street

Westminster

London

SW1H 0ET

Tel: 0207 215 4273

Email: SBCPolicy@beis.gov.uk

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see the consultation document for further information.

If you want information, including personal data, that you provide to be treated as confidential, please explain to us below why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we shall take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential [ ]

Comments: Click here to enter text.

## Questions

Name: Click here to enter text.
Organisation (if applicable): Click here to enter text.
Address: Click here to enter text.

Please check a box from a list of options that best describes you as a respondent. This allows views to be presented by group type.

|  | Respondent type |
| --- | --- |
| [ ]  | Business representative organisation/trade body |
|[ ]  Central government |
|[ ]  Charity or social enterprise |
|[ ]  Individual |
|[ ]  Large business (over 250 staff) |
|[ ]  Legal representative |
|[ ]  Local government |
|[ ]  Medium business (50 to 250 staff) |
|[ ]  Micro business (up to 9 staff) |
|[ ]  Small business (10 to 49 staff) |
|[ ]  Trade union or staff association |
|[ ]  Other (please describe) |

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Click here to enter text.

**Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.**

Please acknowledge this reply [ ]

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

[ ]  Yes [ ]  No

**Please refer to relevant paragraph numbers in the consultations to answer the below questions.**

### Paragraph 6.2 – 6.8

**Question 1\*: Do you agree with the proposals set out in paragraphs 6.2 - 6.7 for how and when to calculate a business’s staff headcount to determine whether they are a ‘small business’ which can use the Commissioner’s services?**

Yes [ ]

No [x]

Please give your reasons.

 Click here to enter text.

### Paragraph 6.10 – 6.11

**Question 2: Are there any circumstances, instead of or in addition to those specified in paragraph 6.11, where it would be appropriate for the small business to complain to the Commissioner without first raising the issue with the respondent?**

Yes [ ]

No [ ]

Please list any other circumstances.

Click here to enter text.

### Paragraph 6.12 – 6.15

**Question 3: What should be the time limit for complaints to be made to the Commissioner, should the Commissioner be able to extend it, and in what circumstances (other than those listed)?**

Please give your answer.

Click here to enter text.

### Paragraph 6.16 - 6.17

**Question 4: Do you agree that complaints referred to the Commissioner should meet the following requirements?**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Requirement | Yes | No |
| a. | Be made in writing  |[ ] [ ]
| b. | Include the date(s) of the matter complaint of  |[ ] [ ]
| c. | Include confirmation by the complainant that they have previously communicated the issue to the respondent and given them reasonable opportunity to deal with it or their reasons if they have not done so |[ ] [ ]
| d. | If the complainant wishes the Commissioner to extend the time limit for submitting a complaint. |[ ] [ ]

Please give your reasons for your answers and list any other requirements that should be considered.

Click here to enter text.

### Paragraph 6.18

**Question 5: Do you agree that the Commissioner should be able to dismiss a complaint in the following instances?**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Situation | Yes | No |
| a. | The complaint is frivolous and vexatious |[ ] [ ]
| b. | The matter is more appropriately dealt with in another way, for example through the legal system, an ombudsman or regulator |[ ] [ ]
| c. | The matter has not caused the complainant to suffer any financial loss, material distress, material inconvenience or other material adverse effect, or is not likely to do so |[ ] [ ]
| d. | The complaint has been remedied |[ ] [ ]
| e. | The complainant is seeking an outcome that the Commissioner does not have the power to provide (e.g. something other than a recommendation |[ ] [ ]
| f. | The matter has been subject to legal proceedings or adjudication proceedings or become subject to legal or adjudication proceedings |[ ] [ ]
| g. | The matter has been previously considered under the Commissioner’s complaints scheme or by another complaints-handling body, ombudsman or regulator |[ ] [ ]
| h. | There are other compelling reasons why it is inappropriate for the complaint to be dealt with under the Commissioner’s complaints scheme |[ ] [ ]

Please give your reasons and list any other circumstances where the Commissioner should be able to dismiss a complaint.

Click here to enter text.

### Paragraph 6.19

**Question 6: Do you think there are specified circumstances in which the Commissioner should be able to dismiss a complaint, which are not covered by the general factors listed above?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.20

**Question 7: Do you agree that the Commissioner should be able to fix and extend time limits for any aspect of the complaints handling process?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.21

**Question 8: Do you agree that the Regulations should require the Commissioner to notify a complainant if their complaint is out of scope or dismissed, and explain the reasons why it will not be considered?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.22

**Question 9: When a complaint is not relevant, or dismissed, should the Commissioner be allowed but not required, to notify the person against whom a complaint is made?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.26 - 6.29

**Question 10\*: Do you agree that the Regulations should require the Commissioner to take into account the conduct, behaviour and practice of the parties but that examples of these should not be listed in the Regulations, leaving the Commissioner to decide what to include in this consideration?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.30 - 6.37

**Question 11\*: If you answered No to Question 10 and think the Regulations should set out specific indicators of behaviour, conduct and practice and for the Commissioner to assess compliance with these, which of the following, or any other, indicators should be included?**

|  | Indicators | Yes/No |
| --- | --- | --- |
| a. | The respondent’s report on payment practices, |[ ]
| b. | Whether parties have acted in a transparent, honest and open manner, |[ ]
| c. | Accessibility of the respondent including how easy it is for the complainant to contact the respondent, |[ ]
| d. | Evidence and information provided by the parties within required timescales, |[ ]
| e. | Willingness to negotiate with a view to promptly resolve the issue, |[ ]
| f. | Reasons given by the respondent for payment matter.  |[ ]

Please list your reasons and any other indicators that should be included.

Click here to enter text.

### Paragraph 6.38

**Question 12: Do you agree that the Commissioner should consider the relative bargaining position of the parties and the use of that position by the stronger party to the detriment of the weaker party when considering what is fair and reasonable?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

### Paragraph 6.39 – 6.46

**Question 13: Do you agree that the Commissioner should consider the impact of the act or omission when considering what is fair and reasonable but that particular impacts should not be listed in the Regulations?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

**Question 14: If you think particular types of impact should be listed, which should be included in the Regulations?**

Please give your answer.

Click here to enter text.

**Question 15\*: Are there any other factors that should be included in the Regulations (in addition to the four proposed)?**

Yes [ ]

No [ ]

Please give your reasons and list the other factors you propose should be included.

Click here to enter text.

### Paragraph 6.41

**Question 16: Do you agree that the Regulations should not list specific types of cases nor therefore corresponding additional factors that the Commissioner must take into account when determining what is fair and reasonable in those specific types of cases?**

Yes [ ]

No [ ]

Please give your reasons.

Click here to enter text.

**Question 17: If you answered No to Question 16, what should the specified circumstances be? And what should the additional factors be in relation to those circumstances?**

Please give your answer.

Click here to enter text.

### Paragraph 6.42 – 6.45

**Question 18\*: Which factors (including but not confined to those listed below) should the Regulations set out for the Commissioner to take into account when considering whether to name respondent in a published report?**

|  | Factors | Yes/No |
| --- | --- | --- |
| a. | Any representations made by the respondent or the complainant as to whether the respondent should be named |[ ]
| b. | Any information or evidence that the respondent knowingly or deliberately misled the complainant |[ ]
| c. | Any information or evidence that the respondent knowingly or deliberately misled the Commissioner |[ ]
| d. | Any information or evidence that the respondent used undue influence, pressure or intimidation tactics |[ ]
| e. | Any information or evidence as to risk of personal harm to any staff of the respondent |[ ]
| f. | Any information or evidence as to the seriousness of the harm caused to the small business by the respondent |[ ]
| g. | Any information or evidence as to the respondent’s knowledge of the harm caused to the complainant |[ ]
| h. | Whether naming the respondent is likely to deter similar acts or omissions in the future |[ ]
| i. | Whether naming the respondent is likely to encourage more businesses to follow good practice of a respondent |[ ]
| j. | Whether naming the respondent is likely to have adverse consequences for the supplier |[ ]
| k. | Whether the respondent has helpfully engaged with the Commissioner Complaints process |[ ]

Please give your reasons and list any other factors.

Click here to enter text.

### Paragraph 6.46

**Question: 19: If you disagree that there should be no specified circumstances that give rise to additional factors that the Commissioner must take into account when deciding whether to name the respondent, what should these circumstances be? And what factors should the Commissioner consider?**

Please give your answer.

Click here to enter text.

**Question 20: Is there anything else you consider the Regulations should cover or do you have any comments on the consultation?**

Please give your answer.

Click here to enter text.

BEIS/16/10RF