



Department
for Business
Innovation & Skills

**Duty to Report on Payment
Practices and Policies**

Summary of responses

MARCH 2015

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Duty to Report on Payment Practices and Policies: summary of responses

Introduction

Late payment remains a significant problem for UK businesses. As of January 2015, the overall level of late payment owed to small and medium sized businesses is reported as standing at £32.4 billion, with the average amount owed to a small business at £32,000¹. Respondents to the *Building a Responsible Payment Culture* discussion paper were clear that, whilst they wanted to see a reduction in late payment, they did not want government to constrain their freedom of contract. Instead, they transmitted a clear desire for greater transparency around payment practices.

Consequently, as part of the Government's response to that discussion paper, we committed to introducing greater transparency through a new reporting requirement on prompt payment practices. We are now seeking to achieve this by taking a delegated power in the Small Business, Enterprise and Employment Bill to allow Government to subsequently introduce a prompt payment reporting requirement through secondary legislation. The Bill is currently before Parliament.

The consultation *Business payment practices and policies: duty to report* set out our initial views on what should be in the secondary legislation on the duty for firms to publish information about their payment practices and performance. We proposed not to dictate payment practices, but instead to remove the opacity to payment information. This would allow market participants to more readily identify which customers were good payers and which offered suppliers the terms that fit best with their business model. We aimed to do this in a way that is both useful but also light-touch, and as least burdensome to businesses as possible.

This document provides a summary of the responses received to the consultation. It does not set out the Government response to responses received. We will publish amended regulations and an accompanying document outlining how the regulations have changed based on the responses received to the consultation after the election.

Responses received

We received 59 written responses to the consultation, primarily from business representative bodies, trade organisations and professional bodies. We also had a number of responses from large businesses in the retail and construction industries. A full list of respondents is available in Annex 1.

¹ http://www.bacs.co.uk/Bacs/DocumentLibrary/PR_Late_payments_are_forcing_businesses_to_make_tough_decisions.pdf

During the consultation period, we also ran five roundtable discussions, attended by 65 people, allowing us to gain direct stakeholder feedback on the proposals outlined in the consultation. We also met regularly with key stakeholders.

Summary of responses

Scope

This section covers questions 2-6 and question 8 from the consultation.

Contracts to be covered

We proposed that the reporting requirement should only apply to business to business contracts, and should exclude financial services contracts. There was overwhelming support for both these proposals, with 61% and 41% respectively agreeing with this (compared to 5% and 3% who did not).

Firms covered by the reporting requirement

As outlined in the consultation document, we proposed that the reporting requirement should extend to large UK companies, large LLPs and all quoted companies. The definitions from the Companies Act would apply to identify those in scope. Over half of respondents agreed with both these proposals (59% and 50% compared to 5% and 3% disagreeing respectively), though there were a few calls for this to be extended to public sector bodies and SMEs to ensure there was a level playing field for all.

We further proposed that businesses should be required to provide individual and non-consolidated reports. Responses were more in favour (42%) than against (27%). However, some respondents argued that this could place an unreasonable burden on businesses due to the complexity of company structures. They suggested there should be some flexibility for companies to decide whether to provide individual or consolidated reports, based on how their invoices are processed and the data required is collated, and what is most useful to suppliers.

We also proposed that the report ought to be mandatory for those in scope. Over half (59%) the respondents agreed with this, 10% were against this proposal.

Content

This section covers question 7, questions 9-13 and questions 17-21 from the consultation.

Metrics to report on

We proposed that the content of the report should be aimed at giving suppliers the information they need to make informed decisions about the payment practices of customers they are entering into business with. The consultation paper included an example of what the report might look like.

We proposed that a firm ought to report on:

- their standard payment terms;
- their maximum payment terms;
- any changes to these terms over the last reporting period;
- average time taken to pay invoices;
- proportion of invoices paid beyond terms; and
- proportion of invoices paid to fixed terms of 30, 60, 120 and over 120 days.

Responses to these metrics were generally supportive.

Almost half of the respondents agreed the report should include metrics on the **standard** and **maximum payment terms** and also on “any changes to these” – 46% in favour compared to 24% against.

Many questions were raised with regards to **standard terms**, in particular the meaning of “standard”. Many respondents argued that it was important to be able to offer flexibility on payment terms, and to agree different terms with different suppliers or customers. Standard terms were therefore rarely used. In addition, different products, even within one firm, would have different payment terms. Providing information on standard terms could therefore be misleading and not very useful. Some respondents also argued that publishing payment terms would breach commercial confidentiality, thereby giving competitors (especially those out of scope of the reporting requirements) a competitive advantage.

On the **average time taken to pay invoices**, half (51%) of respondents considered this useful – only 19% were against reporting on this. A few respondents felt that this could provide a misleading picture, especially when taking different types of products into consideration, as is the case in the retail sector, where different payment times can be agreed depending on the product. The average payment time would not reflect payment times for individual products, rather it could give the impression that payments are made a lot quicker/slower than is usually the case, depending upon the range of products the firm deals with.

Reporting on **payments made beyond terms** was supported by almost two thirds (63%) of respondents. Only 10% disagreed.

Reporting on **payments made within fixed terms** was supported by 39% of respondents, compared to 29% who did not agree with this. However, it was felt that the focus ought to

be on whether the payments were made either within or beyond *agreed* terms, rather than on the length of time it had taken until the payment was made. The proposed metrics could also be too onerous or costly to produce. Suggestions were made for alternative metrics, including reporting on **payments made within and beyond 60 days**, as per the payment terms outlined in the EU Late Payment Directive.

We had also asked whether reporting on these metrics ought to be by **proportion, value** or **both**. Reporting on the **proportion** of invoiced paid beyond and in fixed terms received 19% and 10% respectively; the **value** 7% and 3%; and **both** 36% and 25%. Most respondents felt that, for clarity's sake, firms ought to report on both the proportion and value. Some commented that reporting on just one of these would provide an incomplete picture and the data could be skewed to look more favourable. Conversely, some trade and professional bodies argued that reporting on both could potentially be too onerous and costly.

Reporting on additional details

We asked whether further aspects ought to be reported on, including:

- whether suppliers had been notified or consulted on any changes to their payment terms in advance;
- whether the report ought to include additional information, in narrative form, to explain some of the metrics;
- whether a firm offered e-invoicing;
- whether a firm offered supply chain finance; and
- whether a firm was signed up to a voluntary payment code.

32% were supportive of including information on whether suppliers were **notified or consulted on changes to their payment terms** compared to 5% who were unsupportive of this. 54% of the responses received felt that **additional narrative information** ought to be included to further explain the metrics, though a few suggested this ought to be optional. 10% were against this measure.

Reporting on **e-invoicing** and **supply chain finance** was supported by 56% and 47% respectively (compared to 10% against in both cases). Respondents further considered a **tick box** the better way to report on whether a firm offered e-invoicing and supply chain finance (29% and 19% respectively), though about three quarters did not respond to these questions. 62% agreed that being signed up to a **voluntary payment code**, such as the Prompt Payment Code, should be included in the reporting requirement.

Start the clock

We sought views on the suggestion that there ought to be a common point at which the **clock starts** for invoice payments. We proposed the **date of invoice** as a suitable point.

Almost two thirds (63%) of the respondents were supportive of the reporting requirement specifying when the clock starts on the payment period. There were however, many

comments as to the date of invoice being a suitable starting point. Many felt that there were too many issues around how invoices are issued for this to be effective. In addition, date of invoice was felt not to take into consideration industry specific payment practices, in particular within the construction industry. 39% were against using the date of invoice, compared to 29% in favour. The most cited alternative for a start the clock point was the **date of receipt** (by 23% of respondents).

Supplier lists

In the consultation document we stated that some stakeholders had recently expressed their concerns about the practice of a supplier having to pay to be put on or kept on a **'preferred supplier' list**. They had argued that this practice led to unfairness or also has potential implications on competition with larger firms having the greater potential to pay the upfront costs than smaller businesses. We asked for views on the practice, especially if this were an area where Government could be seen to have a role to play.

Around two thirds of respondents did not comment on either of these questions, often stating that they felt this issue fell outside the scope of the consultation. Of those who did respond, the majority stated that they were concerned about "pay to stay" and similar practices (19 "yes" versus 4 "no" responses). However, in terms of **Government intervention**, the responses were less clear cut – 9 were in favour while 11 were not. The minority that were in favour thought that the Government ought to lead by example and not issue public contracts to those firms using these terms, or define supplier lists and label these terms as "grossly unfair". Alternatively, Government could include these terms in a voluntary code of practice so that signatories will not use them.

Disputes

This section covers questions 14-16 from the consultation.

Payment disputes are a standard practice among companies, especially where there are large quantities of transactions. Disputes can range from easily resolved reconciliations of invoice against supplied goods or services, to more complex and irreconcilable differences.

Disputes as a stalling tactic

We sought views on anecdotal feedback that disputing invoices is used as a stalling tactic to delay when payment needs to be made. A third of respondents (34%) stated that they had experienced companies using disputes as a way of delaying payment, 17% had not. Respondents explained that disputes occur due to incomplete invoices or purchase orders (POs) not being issued. Organisations outsourced to process invoices do not always communicate effectively with either the company or the supplier, especially if there is a problem with an invoice or payment, resulting in the problem not being resolved until investigated by either party. It was also felt that, rather than withholding the whole amount of the invoice, only the disputed amount should be withheld.

When asked whether there was a need for **Government intervention**, most (71%) did not respond. Of those who did, there was no significant difference in the numbers for and against Government intervention (16% in favour, 12% against). Some suggested that

Government could do more to promote best practice and existing routes to resolve disputes. A couple of respondents suggested further transposing the power from the EU Late Payment Directive to give representative bodies the power to challenge grossly unfair terms and practices², or to create a target average payment time. One further respondent suggested setting up an independent body to resolve disputes similar to ACAS.

Definition

We asked whether Government should **define** disputed invoices for the purpose of the report. 51% were in favour of a definition and 15% opposed to this proposal. There was some concern that disputes, when considering sector specific practices, were too complicated to summarise in a single definition. A few respondents suggested that guidance ought to be issued outlining when the clock starts, what constitutes a minor and a major dispute and how quickly they should be solved. It would be important to provide examples within the guidance.

Quibble times

Though not an official question in the written consultation document, we specifically sought views in stakeholder meetings on how firms have experienced the use of maximum quibble times before demanding interest on late payment. We received one written response to this, which stated that few companies seek to exercise the rights provided by legislation, especially against larger companies, for fear of losing a customer or damaging the relationship. At stakeholder meetings themselves, this experience was reiterated. One group felt more could be done on strengthening the maximum quibble time, and another suggested having a named person (e.g. chief accountant or finance director) as the first point of contact for all disputes and who should be held responsible or accountable for resolving these.

Dispute resolution processes

We sought views on our suggestion that firms outline their **dispute resolution processes** in the payment reporting. In terms of the disputes resolution processes, just over half (51%) were in favour of this, 14% were against, but it was suggested that a link to the process on a company's website or supplier portal should be sufficient.

Frequency

This section covers questions 22-24 from the consultation.

We proposed to oblige companies to report at four points in the year. Rather than prescribing a fixed date when all companies needed to report, we proposed instead that companies' publication dates be aligned with their financial year. Specifically, we proposed that the firms should be required to publish their prompt payment reports 30 days after the end of the quarter.

² We published a discussion paper seeking views on this measure at:

<https://www.gov.uk/government/consultations/late-payment-challenging-grossly-unfair-terms-and-practices>

Almost half (41%) were against **quarterly reporting** (compared to 29% in favour), with 27 commenting that quarterly reporting was too onerous, costly and disproportionate for what this reporting requirement was trying to achieve. 11 felt that information would change very little from one report to another. Consequently annual (36% of respondents) or possibly 6 monthly reports (12%) were considered to be more appropriate. There was also a call for the report to be part of the annual report so that it could be audited for accuracy.

On the question of publication date, 61% did not respond to the question on whether to **publish the report 30 days after the end of the quarter**. Of those who did respond, slightly more felt this was not an appropriate period of time (29%) than those who felt this was appropriate (19%). Of the who did not think it appropriate, the majority argued that 30 days was too short a time and advocated a longer time period especially if the report was to be audited. 5 respondents also suggested the length of time given to preparing the report ought to be the same as for corporate financial reports. Other suggestions ranged from 45 to 60+ days.

Just over half (53%) the respondents agreed that the reporting dates should be **aligned with the financial reporting cycle**, compared to 5% who did not agree.

Form and location

This section covers questions 25-29 from the consultation.

Director sign off

When asked whether a **company director** should be responsible for signing off the report, half (51%) of the respondents agreed, 10% did not. 4 respondents felt that there the sign off process should be the same as for the annual reports, annual accounts and other financial information, especially as these are filed at Companies House. As this reporting requirement is not filed there, director sign off would not be appropriate. A further 4 suggested that it should be at the company's discretion who signs off the report, this could be the finance director or another senior manager, for example. 2 suggested that the report could be audited.

Open data principles

We proposed that the report should be consistent with **open data principles**, and asked what we could do to make the data as accessible and useful as possible. 75% of respondents did not answer. Of those who did, the majority agreed that the principles of open data should be followed (14 in favour compared to 1 against), i.e. a simple standardised format which is easily accessible at no or low cost. Some suggested that the **availability of the reports should be widely publicised** and be **accessible via a number of routes**, e.g. via the Companies House, the Prompt Payment Code, or a firm's websites, credit reference agencies and gov.uk, or via a single portal with a ranking system (though others did not like the idea of this).

Publishing the report

We suggested that a business should be required to provide their report on their company's website, where they have one. Where companies do not have a website, we

suggested that they should publish their report on an official public records website, such as The Gazette.

A third of respondents (32%) agreed that the report should be **published on a company website** instead of in a company's annual accounts, with only 10% disagreeing. 15% agreed that this should be published alongside a company's annual account, 5% disagreed. Some pointed out that it would be easy to hide the report in a not easily traceable part of the website, making the data less transparent and more difficult to police. 10 respondents said the report should be included on *both* the website and in the annual report or accounts and a further 7 said it should *only* be included in the annual report or the annual accounts.

The **Gazette** was generally not considered to be a suitable location for the reports for companies without a website (22% against compared to 8% in favour), in fact, some respondents considered it unlikely that the companies in scope of the reporting requirement would have a website, given their (large) size. A few respondents thought a suitable alternative was via Companies House; the corporate website; or as part of the annual report.

In the roundtable discussions, we also asked attendees about the option of pursuing a single online portal where all reports should be available. 4 respondents picked up on this in their responses and expressed support for this idea, though one further respondent opposed this.

Enforcement

This section covers questions 30-31 from the consultation.

Criminal sanctions

In our consultation, we argued that public pressure through the open nature of the report would be the main driver ensuring that businesses comply with the new mandatory reporting requirement. We argued that we anticipated that third parties would start to publicise and compare the behaviour of reporting firms. We also thought that good payment behaviour by responsible companies would then begin to lead the way to changing other firms' behaviours.

Nonetheless, to ensure that the report is robustly enforced in cases where public pressure proves insufficient, we proposed that breach of the requirement should be punishable by a criminal offence, consisting of a summary conviction limited to a fine. This follows the precedents for similar reporting requirements established by the Companies Act 2006.

There was a mixed response to this. Slightly more agreed that a breach of the reporting requirement should be sanctionable by a criminal offence (24% compared to 17% against). Some felt this was disproportionate or inappropriate and that any criminal offences should be comparable to those for similar reporting requirements. There was however, some support for making repeated failure to comply and false reporting criminal offences. There was also a call for more information on how this new requirement would be policed and enforced.

Guidance

We asked whether guidance on complying with the report would be useful. Among those who responded to this question, there was clear agreement that guidance would be helpful (54% in favour compared to 0% against). 21 respondents thought that it should be compiled by BIS/Government, though 6 respondents also suggested this should be done in conjunction with a working group made up of businesses and/or business representative bodies. Equally, 3 respondents called for sector and industry specific guidance, in particular to support the construction sector.

Next steps

Following the election, we will publish amended regulations and an accompanying document outlining how the regulations have changed based on the responses received to the consultation. We will also provide detail on how this will apply to the Devolved Administrations.

Annex 1: List of respondents

Association of Accounting Technicians
Association for Consultancy and Engineering
Association of Professional Staffing Companies
ASDA
B&Q
Baker & McKenzie
Balfour Beatty
British Chamber of Commerce
Business Information Providers Association
Builders Merchants' Federation
British Property Federation
British Retail Consortium
Business Services Association
BT
Confederation of British Industry
Civil Engineering Contractors Association
Chartered Institute of Credit Management
Chartered Institute of Procurement and Supply
City of London
Construction Products Association
Creditsafe
Engineering and Machinery Alliance
Electrical Contractors' Association
Food and Drink Federation
First Group
Federation of Master Builders
Ford Motor Company
Forum for Private Business
Federation of Small Businesses
Grant Thornton
Groceries Code Adjudicator
Home Builders Federation
HSBC
ICAEW
Institute of Directors
John Lewis Partnership
Kingfisher
Law Society
Lloyds Banking Group
National Federation of Roofing Contractors
National Specialist Contractors' Council
Premier Foods
Recruitment and Employment Confederation

Road Haulage Association
Rolls Royce
Satago
Screwfix
Specialist Engineering Contractors' Group
Society of Motor Manufacturers and Traders
Sunderland City Council
Tesco
The 100 Group
The Wonderland Ltd
Welsh Government
Wicked Uncle



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