Department for
Business, Energy
& Industrial Strategy

CREATING A RESPONSIBLE PAYMENT CULTURE: A CALL FOR EVIDENCE IN TACKLING LATE PAYMENT

Government response

June 2019

Any enquiries regarding this publication should be sent to us at:
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Foreword

Kelly Tolhurst MP, Minister for Small Business, Consumers and Corporate Responsibility

Our modern Industrial Strategy aims to make Britain the best place to start and grow a business and removing barriers to growth is key to this. Businesses of all sizes should be able to compete and thrive, enabling a more productive business environment with small businesses able to access opportunities to grow. Tackling the continuing issue of late payments is vital for this to happen.

I am passionate about the topic myself. Having run my own small business, I personally know the frustration and the negative impact of businesses being paid late. And I know that time spent dealing with late payments is a drain on resources and wastes valuable time that could be better spent running the business.

Government has a number of measures in place to tackle late payment, from the Prompt Payment Code, the ability to charge interest on late payments, increased transparency through the Payment Practices Reporting Duty and the creation of the role and office of the Small Business Commissioner over a year ago. But the Call for Evidence told us that there is more to do to improve the payment landscape.

Government is committed to supporting Small and Medium-sized Enterprises (SMEs) to start well and grow, including a network of 38 Growth Hubs across England providing advice, guidance and support. As part of our Industrial Strategy we have an action plan to unlock over £20bn of investment in innovative and high potential businesses. And where we see practices that unfairly constrain SMEs' finance choices, we are prepared to act. For example, we recently removed a barrier that was preventing some SMEs from using invoice finance because of prohibitive contract terms imposed by their customers. This new measure is expected to provide a long-term boost to the UK economy worth almost £1bn.

I believe we need to take firm action to tackling the scourge of late payments but we also need to maintain a holistic approach to culture change by using all of the avenues available to us in this space.

I am grateful to those of you who took the time out of your busy schedules to engage in the Call for Evidence. We received nearly 300 responses - the most responses we have ever had on a consultation on this issue. I know there is a keen interest in this topic and I am delighted to share our thinking and policy proposals in this government response.

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Introduction

On 4 October 2018, we launched a Call for Evidence, asking for views on how to create a responsible payment culture for small business. The call for evidence considered the following:

1. **Creating a responsible payment culture** – the problem under consideration: This analytical chapter sets out a brief summary of evidence to support stakeholders in responding to the questions posed in this call for evidence. It covered the background to the issues and the evidence on current payment practices such as timings, differences by sectors and firm sizes, trends, causes and impacts.

2. **Existing payment practices and experiences:** This section sought evidence on existing payment practices and experiences from both suppliers and buyers. We invited businesses to submit evidence on late payment, their typical payment terms and how these have changed over recent years.

3. **Existing measures to improve payment practices:** This section gathered views on existing measures to create a responsible payment culture and what more can be done to further refine measures and promote good practice. It also sought views on experiences from other countries which have measures in place to improve payment practices.

4. **New measures to improve payment practices:** This section sought views on new measures to encourage a responsible payment culture. It sought opinions on how government can go further to empower small businesses, including options for technology to enhance the payments process.

The Call for Evidence was open for 8 weeks, closing on 29 November. We held a series of roundtable events to seek views from stakeholders across the breadth of the country.

In total we received 283 responses from all sizes of businesses, business representative organisations and individuals. Respondents addressed some or all of the questions, and this document sets out a summary of the main findings made in relation to each part of the Call for Evidence. It also includes actions and policies to be taken forward.

Annex A provides a list of organisations which provided responses. Individuals who provided responses are not listed. The table at **Annex B** shows the types of organisations that responded to the Call for Evidence, with the majority coming from SMEs (72%).

In the Call for Evidence document, we asked questions themed around three different areas; ‘existing payment practices and experiences’, ‘existing measures to improve payment practices’ and ‘new measures to improve payment practices.’

Policies and actions to be taken forward

We plan to seek views in a consultation on the merits of strengthening the Small Business Commissioner's (the Commissioner) ability to assist and advocate for small business in the area of late payments through the provision of powers to compel the disclosure of the information. The provision of powers like those of the Groceries Code Adjudicator could benefit the Commissioner in investigations.

The consultation will seek views on the merit of providing the Commissioner with powers to activate enforcement mechanisms against:

- Large businesses who do not comply with information requests. The consultation will seek views as to whether the Commissioner should have the power to enforce non-compliance with their information requests, such as through court orders and / or financial penalties.
- Large businesses who are found to have poor or unfair payment practices towards small businesses. The consultation will also explore whether sanctions should be imposed by the Commissioner under certain specific circumstances, such as the undertaking of binding payment plans and financial penalties where payment fails to take place.

Responsibility of the voluntary Prompt Payment Code is to move to the Commissioner and be reformed: this will unify prompt payment measures with the Commissioner and address weaknesses within the current Code's operation. We will engage with signatories and wider industry to shape those reforms.

I intend to establish a ministerially led group to bring together key Government Departments to act on improving prompt payment across both the public and private sectors.

Government will take a tough compliance approach to large companies who do not comply with the Payment Practices Reporting Duty. The legislation allows for the prosecution of those who do not comply and, where prosecutions are successful, fines may be imposed. We will use this enforcement power against those who do not comply where necessary.

Government will launch a Business Basics Fund competition up to £1 million, which will encourage SMEs to utilise payment technology. This will boost productivity in SMEs by reducing the time taken to chase payments; and,

Government is working with UK Finance and the finance sector to review the role Supply Chain Finance plays in fair and prompt payment, including the potential for an industry led standard for good practice in Supply Chain Finance.

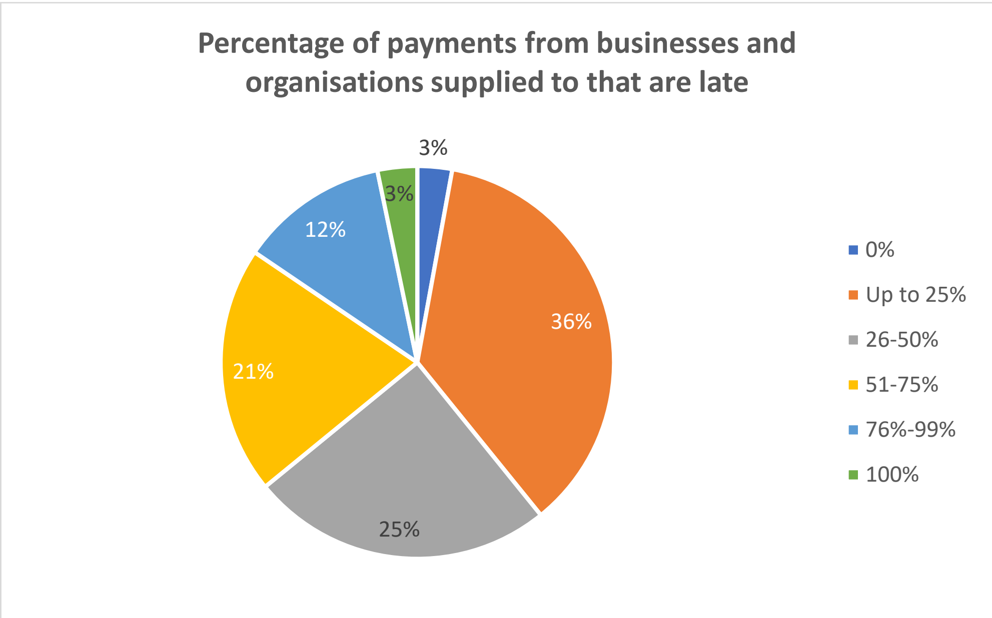
Government also wants to bring greater transparency to how supply chain finance is reported in company accounts and assessed in audits, by working with the Financial Reporting Council (FRC) to develop guidance and build it into their sampling of companies' accounts.

Key Themes

This section summarises key themes from questions asked throughout the Call for Evidence in relation to existing payment practices and experiences. Respondents expressed a wide range of views and there was no real consensus, either with regard to the extent of the issue itself or what the best solution to the problem is.

Experience of late payment

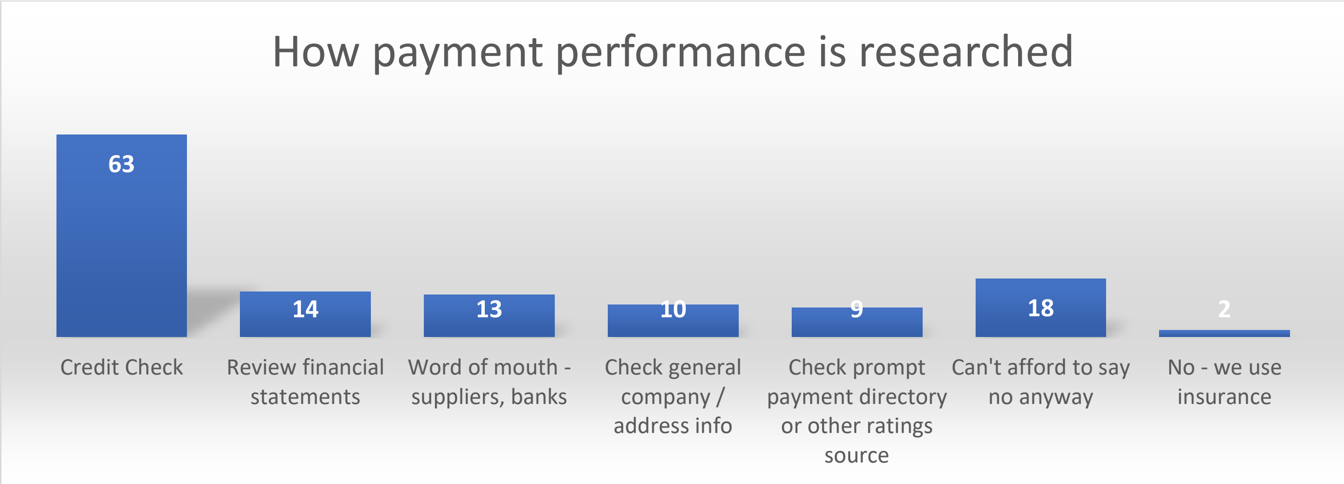
It is clear from responses to the Call for Evidence that the level of late payment in the UK is far too high. As demonstrated by the chart below, 97% of those who responded to the question indicated that they experienced late payments from their suppliers. Only 11% of those who answered the question said it had improved, with many respondents saying it has become worse over the last three years. On a more positive note, the majority of respondents indicated they either never or rarely experience invoices that are not paid.



There were few comments regarding measures to improve payment practices in other countries – 80% of respondents did not answer the question. Of the few that did, 24 felt there was a different culture to paying on time in other countries, where prompt payment was valued more than in the UK.

Researching payment performance

59% of respondents indicated that they do not research the payment performance of a business before they enter into an agreement with them. Where they do, carrying out a credit check was the most popular method for researching payment practices, identified by 63 respondents – as demonstrated in the chart below.

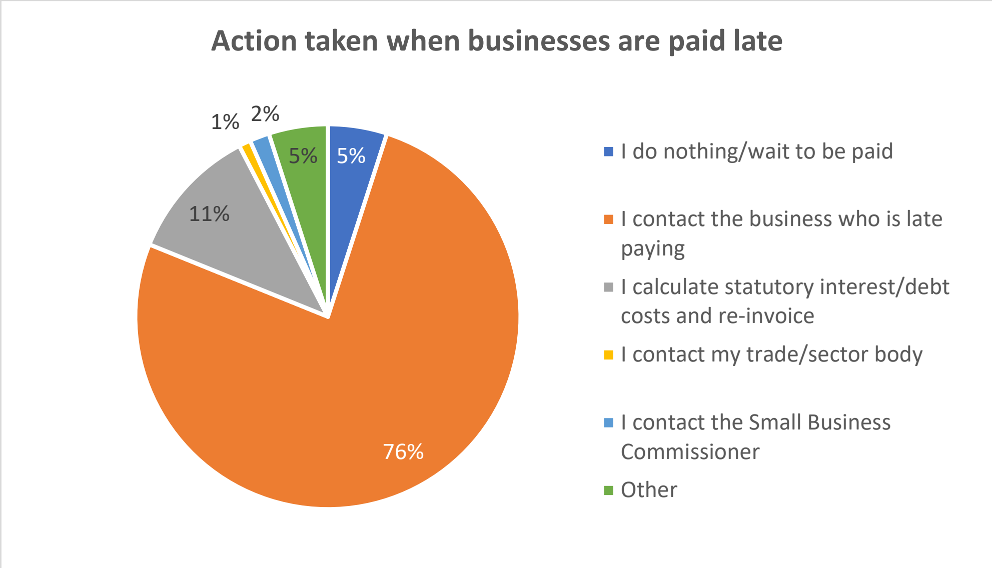


Taking action when payments are late

When dealing with late payments, the vast majority (76%) of businesses contact the business who is late in paying.

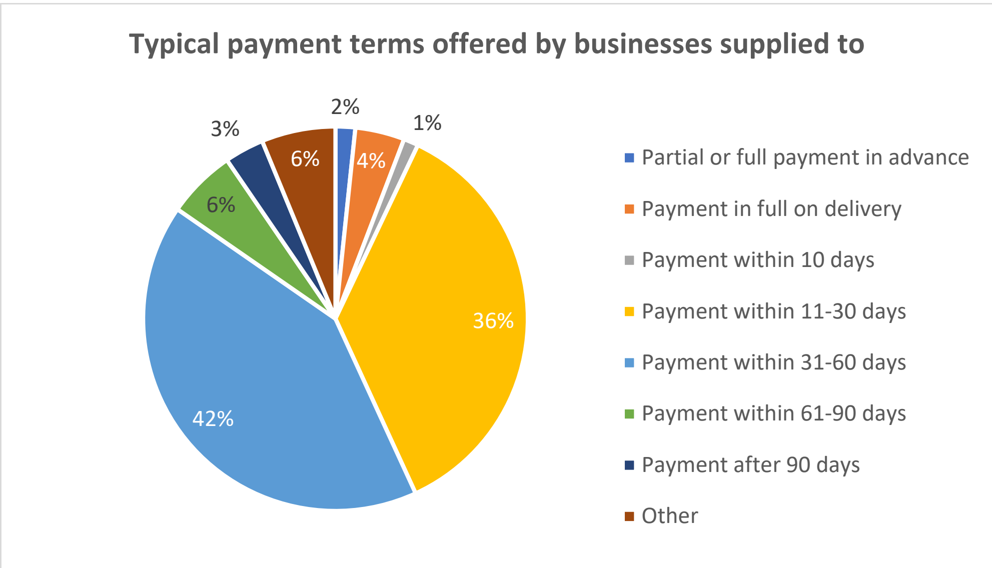
Respondents indicated that other options, suggested in the consultation, were taken far less often. Only 11% of those who responded exercised their right to calculate statutory interest and debt costs and re-invoice the late paying business. Only 2% of respondents said they contact the Commissioner when they are paid late.

Outside of the prescribed options, several businesses said they would threaten or proceed with legal action if they still had not been paid after contacting the business paying late. Feedback from business representative groups which had surveyed their members, suggested that one of the underlying reasons for the culture of late payments is the reluctance among many smaller businesses to enforce their legal rights in relation to late payment. Members feared it would damage the relationship with their customers and result in lost business in the future.



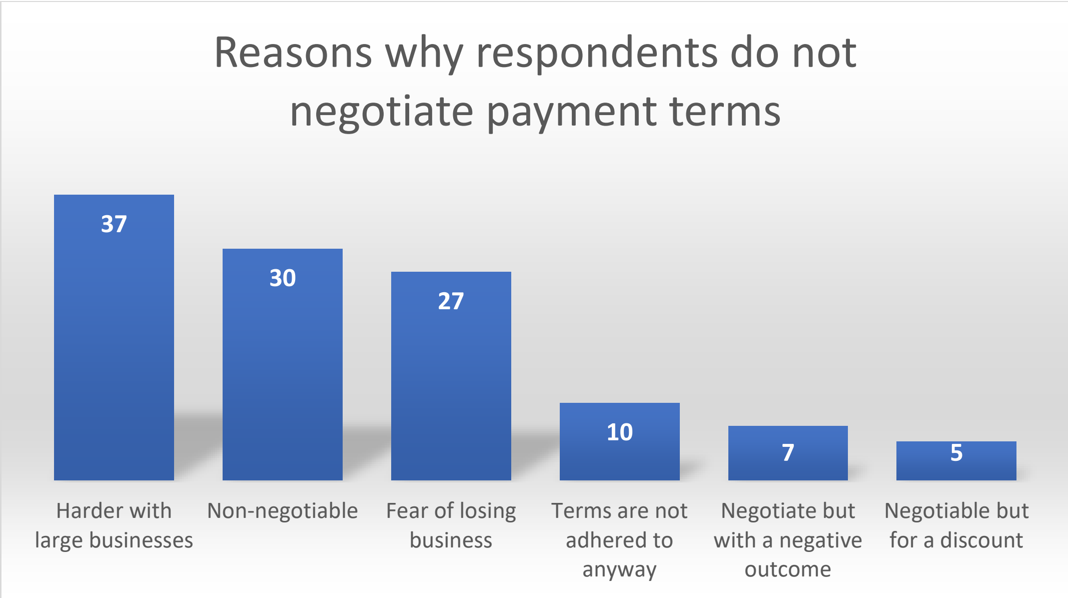
Payment terms offered by businesses supplied to

Encouragingly, 85% of respondents said they are typically offered payment terms of 60 days or less by businesses they supply to, and only 9% of respondents said they were typically offered payment terms over 60 days. The majority of respondents (65%) indicated there had been no change in the terms offered to them over the past three years.



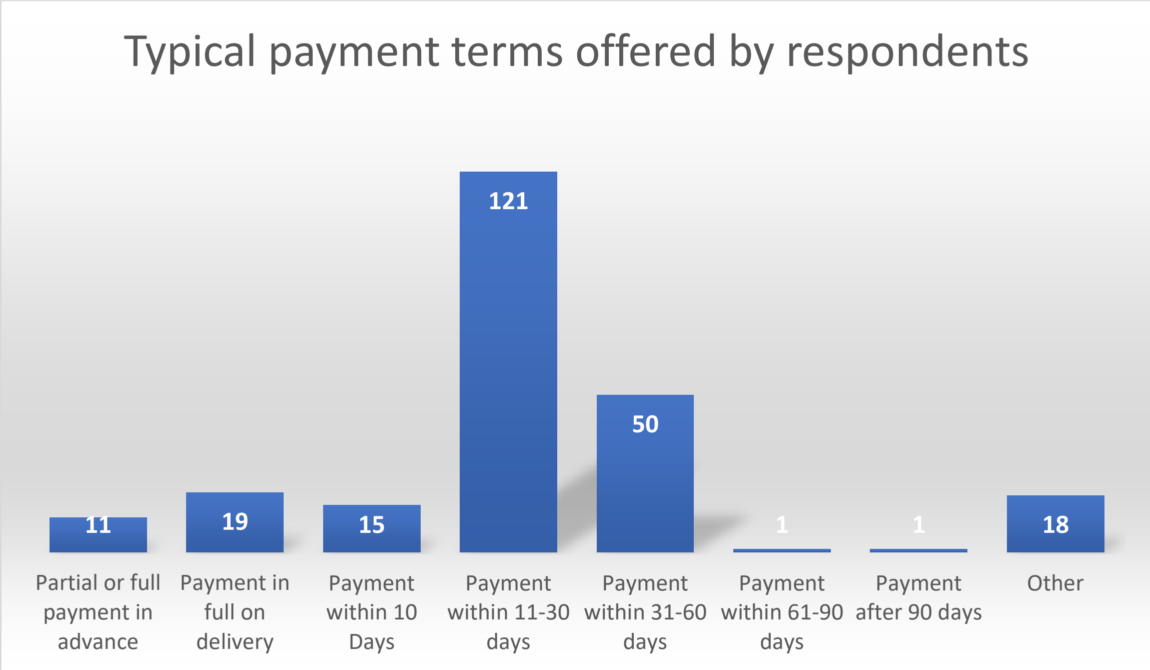
Negotiating payment terms

59% of respondents said they feel unable to negotiate and/or challenge payment terms offered to them. When broken down into the different sizes of business that responded, 60% of micro businesses and just over 50% of SMEs were of this view. Key themes that emerged from comments are listed in the chart below; the most frequently received comment was that it was difficult to negotiate with larger businesses.



Payment terms offered by respondents

The majority of respondents (121) offered their suppliers 11-30 day payment terms. 50 offered 31-60 days. Just one respondent said they offered 61–90 day payment terms and one said they offered over 90 days. Overall, the terms offered by respondents to their suppliers appeared to be more favourable than the terms they were offered – e.g. 87 respondents said they were offered by their suppliers 11-30 day payment terms compared to 121 who offered to their suppliers 11-30 day payment terms.

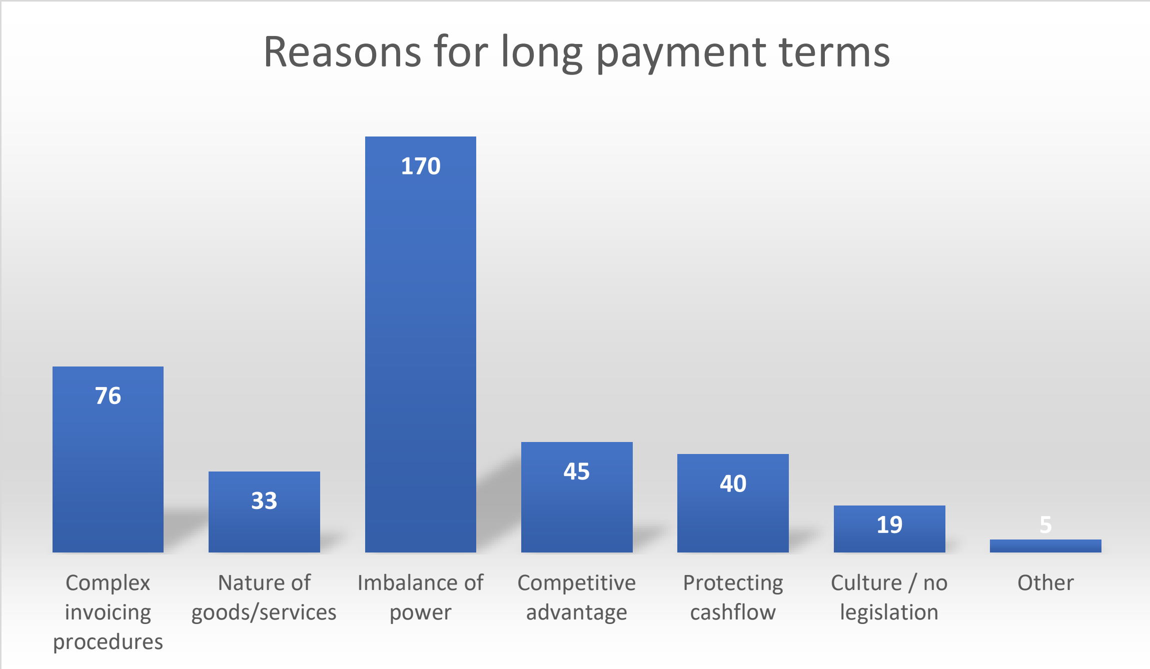


Reasons for long payment terms

A large number of respondents (170) felt that an imbalance of power between businesses is a key reason for long payment terms. Some of the anecdotal feedback from responses to government's call for evidence suggest an imbalance of power is also the major factor preventing businesses from chasing payments when they are late.

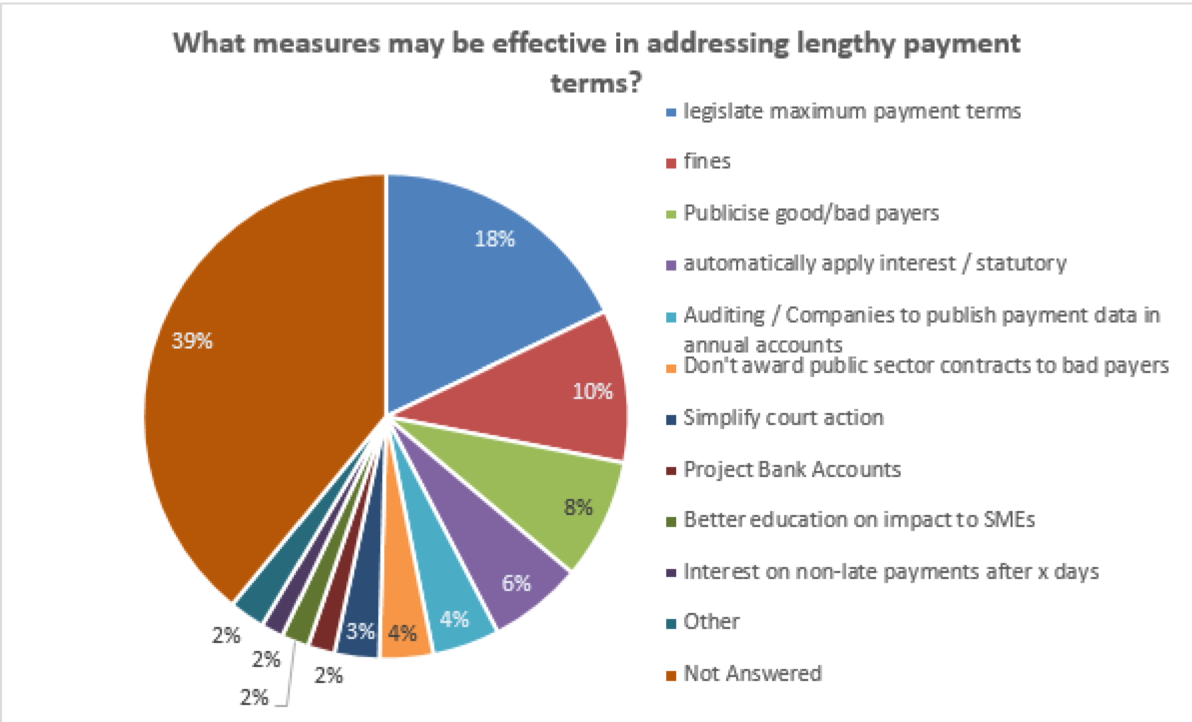
Of SMEs who answered this question, 70% cited imbalance of power as a reason for long payment terms. Evidence gathered during stakeholder events highlighted that this is not only an issue experienced by SMEs. There was also an imbalance of power between businesses of a comparable size, impacting small and large businesses.

Respondents also identified complex invoicing procedures as a common cause of long payment terms, and a number of respondents suggested it was to provide a competitive advantage and to protect cashflow.



Addressing long payment terms

There was no consensus on what measures may be effective in addressing long payment terms. However, less than a fifth of respondents (18%) suggested government should set out in legislation the maximum number of days in which an invoice must be paid, with no ability to negotiate longer terms.



Only 16% of those who responded thought the definition of when a payment term is considered to be 'grossly unfair' is clear. This was broadly consistent across different business types. There were a number of comments about there being a lack of awareness about the measure. There were few suggestions on how the legal definition could be amended to provide greater clarity. For example, a number of respondents suggested introducing specific timelines for when payment terms become grossly unfair, however this would be the equivalent of legislating maximum payment terms.

54% of all respondents thought that changes or measures could be introduced to make it easier for suppliers to charge interest. Of the few suggestions for what changes could be introduced, 42 responses mentioned fixed interest rates could make it simpler.

Technology

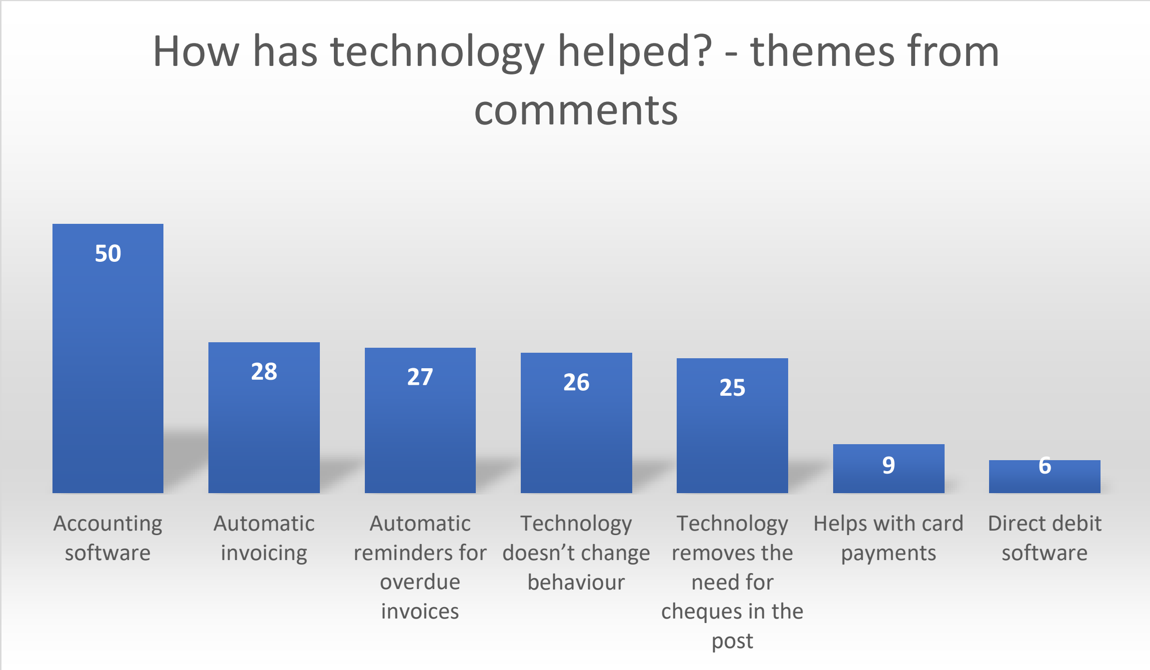
62% of respondents use technology to manage the payment process. The most common type of technology cited as being used is accounting software, identified by 50 respondents. In addition, several other respondents stated they use automatic invoicing (28 responses) and automatic reminders for overdue invoices (27 responses), both of which are common features of accounting software.

There were mixed views on how technology helps businesses get paid on time. The most common reason, given by 25 businesses, was that it prevents businesses from claiming they have already paid (for example, by claiming the cheque is in the post). One respondent highlighted the impact adopting new technologies had for them:

"We moved to automatic invoicing with reminders set at milestones. We also offer card payments which cost 2% of the invoice value. It has reduced bad debtors from 55 days down to 33 days."

Not all respondents agreed that technology plays a role in getting paid on time. 26 respondents stated that new technologies don't change behaviours, which they believe is the actual cause of late payments.

"We have always used technology for client payment - the technology is not the problem, the manipulation of suppliers is the issue".

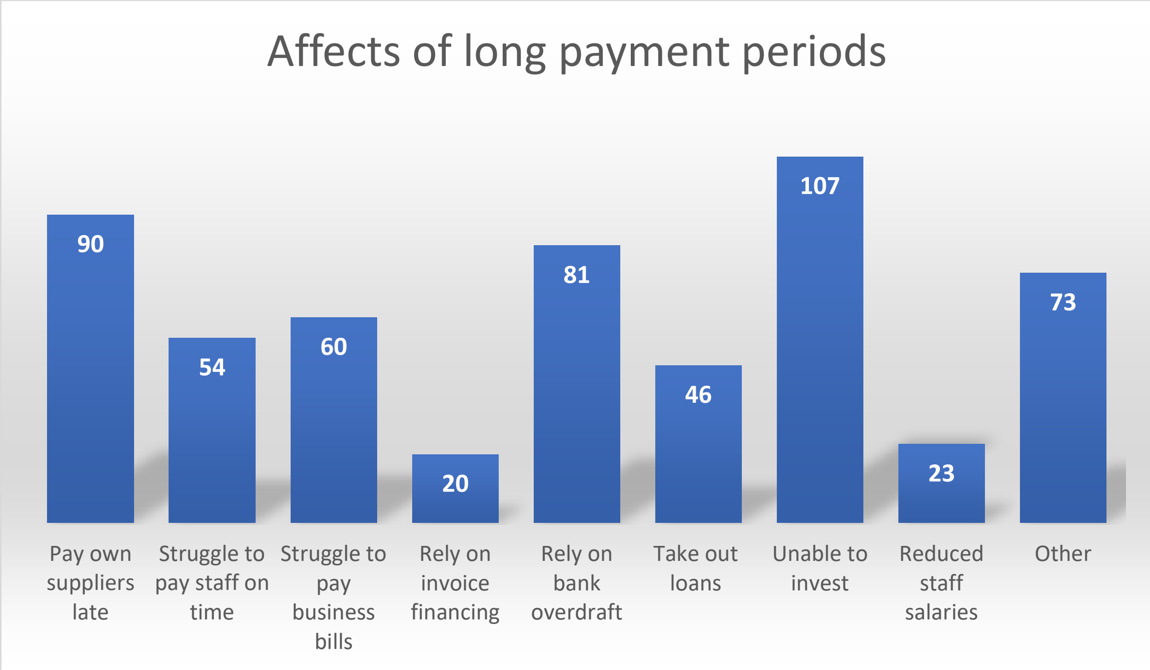


Impacts of long payment terms and late payment

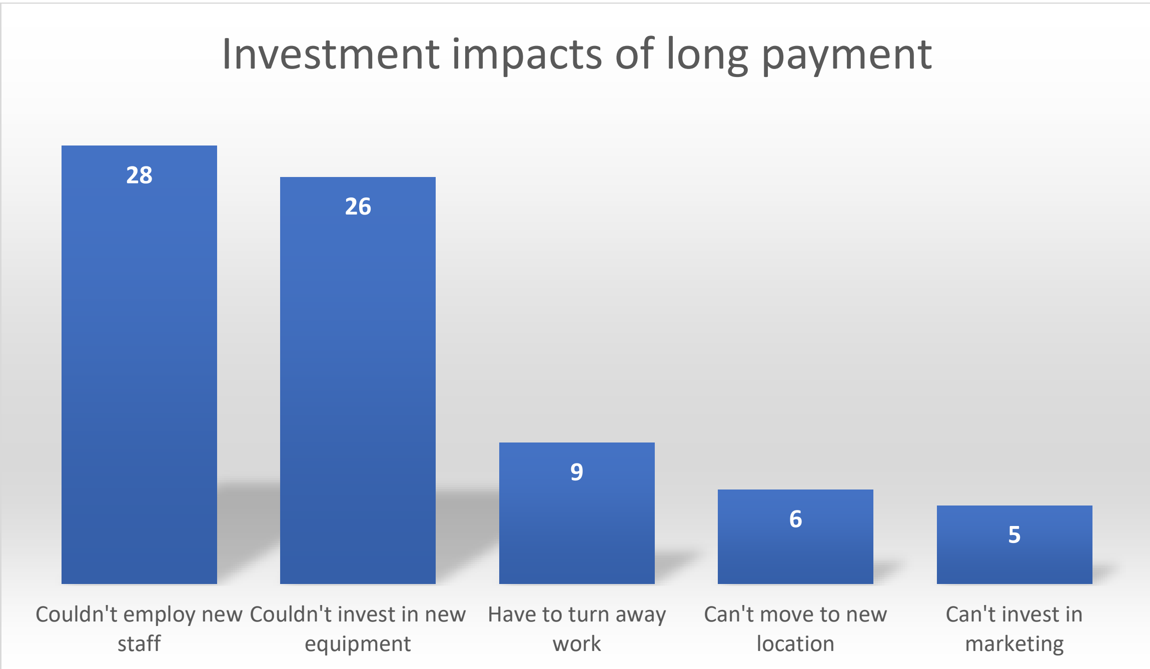
Long payment terms and late payment have a variety of negative impacts on businesses. Most commonly mentioned, over 100 times and by 45% of respondents, was that businesses were unable to invest in new equipment and staff, which in turn impacts on a company's future growth and ability to increase their own revenue.

Long payment terms and late payments also cause issues for businesses trying to manage their own cash flow. 90 respondents (38% of those who answered the question) mentioned that businesses who pay their own suppliers late meant there was a knock-on effect of late payments down the supply chain. Businesses also struggle to pay their own staff on time (22%), pay their business bills (25%), and rely on sourcing additional financing such as invoice financing (9%), bank overdrafts (34%) and loans (19%).

Responses also unveiled the human impact of late payments. 10% of those who responded said their staff have had to take a cut in their salaries as a result. Respondents also stated their staff receive fewer awards/bonuses as a result. There were also two instances where businesses had to let staff go and five instances where businesses became insolvent as a result of long payment terms and late payments.



58% of respondents said long payment periods have impacted their investment plans for growth. Two of the most common impacts were that businesses could not employ new staff or invest in new equipment.



Empowering Small Business

Addressing the imbalance of power

As we set out in the Call for Evidence, when businesses form contracts with each other their ability to agree on favourable payment terms and how they will abide by them will depend on their respective bargaining power, particularly the extent to which one party needs the contract from the other and the availability of other options.

Issues often arise in payment practices involving one or a handful of large buyers who are supplied by smaller businesses. If the supplier is reliant on the buyer and could suffer serious detriment if the relationship breaks down (e.g. large loss of sales that cannot be replaced elsewhere) then the supplier lacks the key tool of the market in disciplining unfavourable behaviour – the ability to take one's business activity elsewhere. Therefore, the buyer is in a position to dictate terms, or make a "take it or leave it" offer.

As stated earlier, imbalance of power was clearly identified as a key reason for long payment terms, with accompanying views from respondents reinforcing this:

"Typically, large companies will insist on dealing on their own standard payment terms, knowing that they are in a stronger position than their supplier who will be reluctant to enter into a dispute with a client."

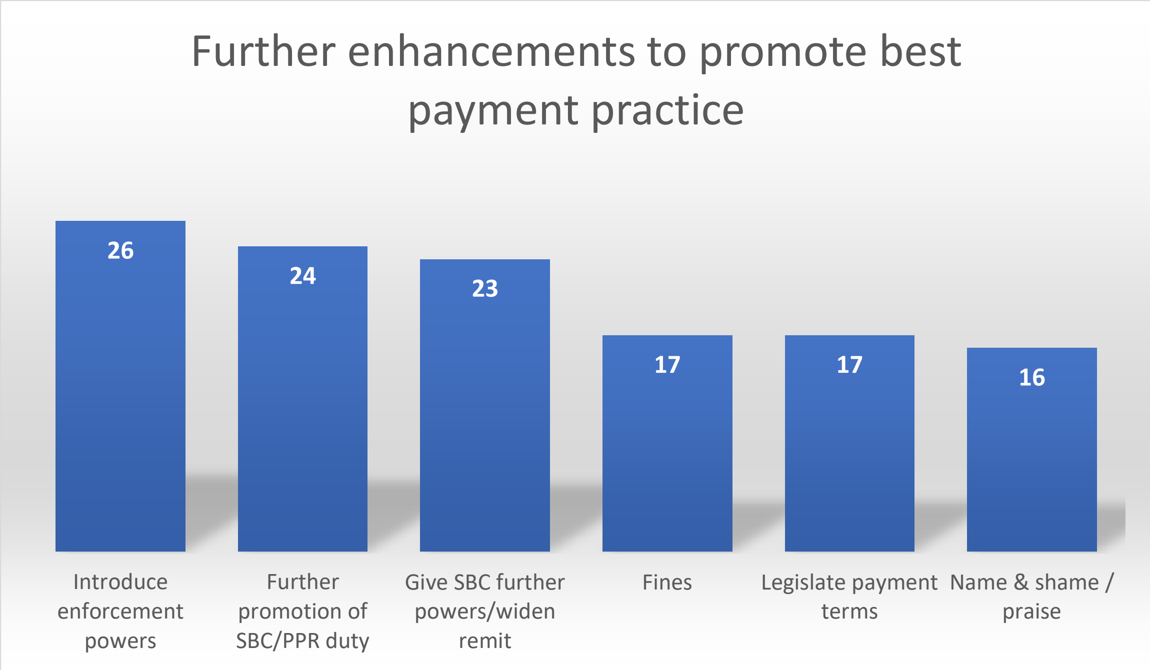
"Larger businesses tend to dictate payment terms to their suppliers. If small suppliers of goods and services wish to trade with them, they almost have no choice but to accept."

Government is determined to empower small businesses to get a fair deal. Although there were mixed views on the level of impact the Commissioner will have on the culture of payment practices, government believes he is beginning to have a positive effect through his recovery of £3.5 million owed to small business in late payments to date, and that there is more that can be done.

A common theme that emerged on how to improve best payment practice was the Commissioner having a broader role, which government believes could help address the imbalance of power. Suggestions included facilitating small businesses to make anonymous complaints to the Commissioner, and to name and shame bad payers. The Commissioner already has the power to publish the details of his impartial inquiry into a complaint and his fair and reasonable determination of that complaint, and to receive anonymous complaints. A further suggestion was made by respondents that the Commissioner should be given new powers to fine businesses.

Additionally, the BEIS Select Committee Small Business and Productivity Inquiry report, published on 5 December 2018[1], recommended that government should legislate to give the Commissioner powers to fine companies who pay late.

[1] Small Businesses and Productivity 15th Report of Session 2017-19



Payment terms

While setting limits on the maximum legal payment terms might address the problem of lengthy payment periods in some commercial contracts between the purchaser and supplier, we believe the disadvantages are of greater significance.

Accepted payment terms vary across the economy from sector to sector and a 'one size fits all' approach is not the best way to deliver a culture change. If we were to take a sectoral approach to this policy, there would be significant variation in structures for payment terms for construction, retail, manufacturing etc. This would only complicate the landscape even further for small businesses.

Furthermore, government would be restricting businesses' ability to negotiate business to business contracts, which carries a risk of a negative impact on the UK economy of making business more difficult to do.

UK legislation already establishes maximum 30-day payment terms for transactions with public authorities and 60-day payment terms between businesses, unless they agree longer terms and those terms are not grossly unfair to the supplier.

In relation to the definition of "grossly unfair", there is no guarantee that amending the definition will lead to more small businesses exercising their legal rights. Businesses could still be discouraged by the costs associated with taking a case to court and many small businesses consistently mention wanting to avoid damaging the relationship with their purchaser. It is unlikely that a consensus on what should be deemed "grossly unfair" would be reached across the vast range of sectors. An attempt to clarify the definition may actually complicate it further and there is currently little evidence of whether attempts to clarify this in legislation have been successful in other countries - for example in Ireland, where they have included additional indicative criteria that the courts could consider. However, government believes that the Commissioner has a role in promoting information and advice on the definition to make it easier for SMEs to understand.

Currently, UK legislation broadly gives suppliers the right to charge interest of 8% above the Bank of England Base Rate for any late payment and reclaim administrative costs for chasing late payment. Awareness and confidence in using this existing power needs to be increased and is where efforts should be targeted.

Government believes that if this existing power were to be amended to charge interest, this could create further confusion and reduce what is already a low level of uptake further for minimal monetary gain. There is also a question over whether businesses would use any new powers, given the already demonstrated low uptake and if it required businesses to take court action.

The Small Business Commissioner - new powers

The Commissioner, launched in December 2017, is committed to supporting Britain's 5.7 million small businesses to resolve payment disputes with larger private sector businesses, helping drive a culture change in payment practices. As of 1 May 2019, the Commissioner has recovered over £3.5 million owed to small businesses.

Given that the Commissioner has been operationally independent since December 2017, and following a call for the Commissioner to be given greater powers, government believes it is sensible to assess and re-evaluate the Commissioner's enforcement powers in order to go even further to drive culture change in private sector payment practice.

We plan to seek views in a consultation on the merits of strengthening the Commissioner's ability to assist and advocate for small business in the area of late payments. The provision of powers to compel the disclosure of the information, like those of the Groceries Code Adjudicator,[2] could benefit the Commissioner in investigations.

The consultation will seek views on the merit of providing the Commissioner with powers to activate enforcement mechanisms for:

- Large businesses who do not comply with information requests. The consultation will seek views as to whether the Commissioner should have the power to enforce non-compliance with their information requests, such as through court orders and / or financial penalties.

- Large businesses who are found to have poor or unfair payment practices towards small businesses. The consultation will also explore whether sanctions should be imposed by the Commissioner under certain specific circumstances, such as the undertaking of binding payment plans and financial penalties where payment fails to take place.

The Commissioner's current power to provide non-binding recommendations is seen by many as weak and does not provide confidence to SMEs that action will be taken on complaints raised. The provision of these new powers to the Commissioner could support compliance and best practice in payment culture, as well as invite greater confidence from the SME community

[2] Groceries Code Adjudicator Act 2013

in government's commitment to support them in addressing late payments and ensure that the correct powers exist to ensure co-operation with his investigations.

Currently the Commissioner can only act on a complaint from a small business, many of which fear commercial reprisal for raising an issue. Therefore, we also plan to seek views in the consultation on whether the Small Business Minister should be able to refer a matter to the Commissioner for inquiry. This would provide opportunity for the Minister to give the Commissioner the ability to consider specific issues affecting SMEs, for example barriers to the adoption of payment technology or specifically sectoral issues. This would be a useful tool to have and provide government with valuable evidence to inform future policies in this area. In addition, we intend to consult on whether the Commissioner can initiate an inquiry where there is suspected bad practice without a small business complaint being raised.

The Small Business Commissioner – information and awareness

Information on payment performance and awareness of the tools and techniques that can help facilitate fair payment practices, empower small businesses and help to address the imbalance of power.

A number of responses to the Call for Evidence highlighted that there was a lack of awareness of the Commissioner and the support on offer, and there is further work to do to raise the Commissioner's profile and further promote the services and support on offer.

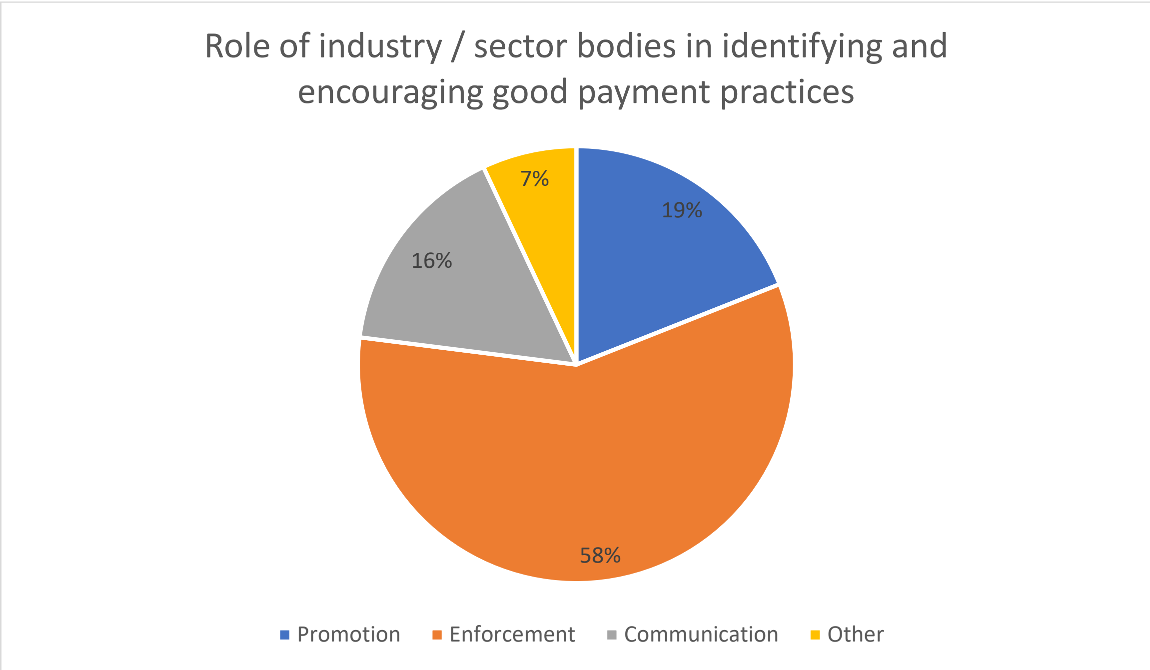
There is also a clear demand from small businesses for an intervention which builds the confidence and capability of small business to negotiate payment terms and help small businesses resolve payment disputes in a way which preserves business relationships.

The Commissioner is committed to engaging with businesses of all sizes across the UK. The Commissioner will improve its information and advice on payment issues, including how to take action if a payment is late, delivered through its website, which any business can use, signposting small businesses to existing support. It has a useful tool for calculating the interest a business can charge on late payments.

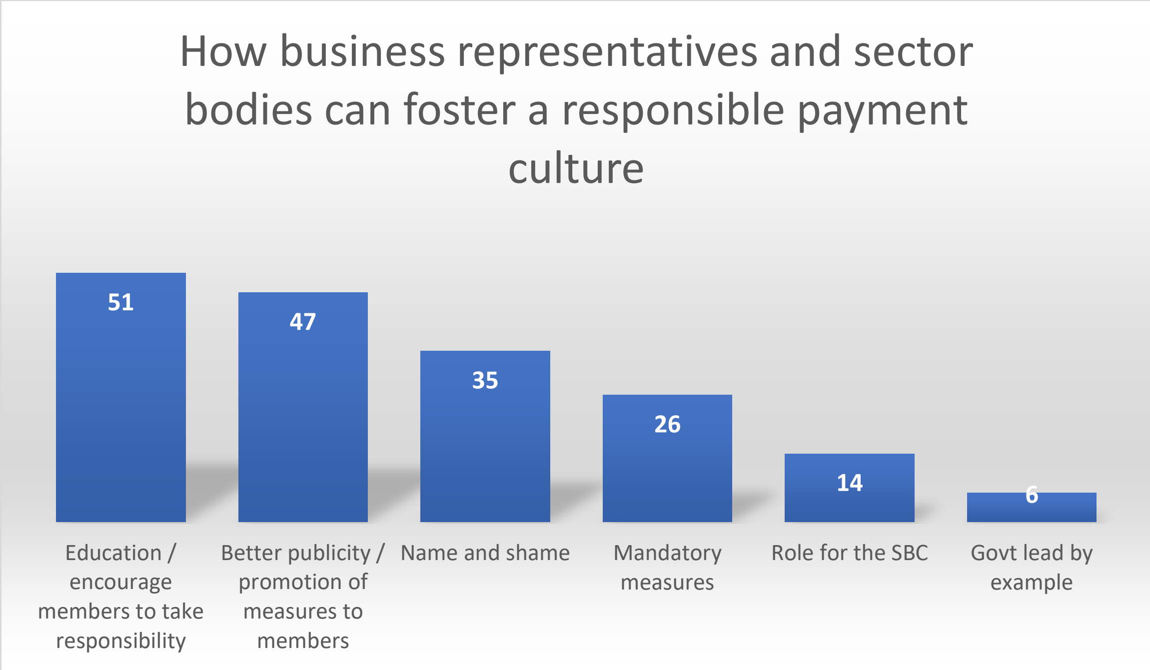
The Commissioner will work with partners to develop the evidence base and make recommendations on how to address significant payment issues. The Commissioner will assess whether new research is needed to help deliver this.

Transparency and Industry Leadership

As we stated in the Call for Evidence, we are aware of the valuable role industry and sector trade body organisations can play for their members in providing advice, guidance and networks and also challenging unfair practices, setting norms and changing culture in payment behaviour. Each individual business has the power to change the culture. By leading by example, with large businesses having a particular responsibility to do so. By not accepting bad practice and calling it out, making the use of the powers available to seek redress. Responses to the Call for Evidence reinforced this view.



While the Call for Evidence has highlighted several steps government could take to tackle the scourge of late payments, the roundtable discussions and responses also helped to highlight that businesses need to take responsibility and play a lead role in tackling this issue. The role that representative and industry sector bodies should take in educating and encouraging their members to take responsibility and use existing late payment measures was emphasised, along with a role in publicising and promoting existing measures.



Payment Practices Reporting

The Payment Practices Reporting (PPR) duty that broadly requires large businesses to report biannually on their payment practices and performance is creating transparency in payment behaviour. At the end of April 2019, over 15,000 reports on payment practices had been submitted and published on the gov.uk website by over 7,000 companies. This is also beginning to increase Board-level interest in late payment, making payment behaviour a reputational, board room issue. As we have seen recently from the removal and suspension of businesses from the Prompt Payment Code (PPC) by the Chartered Institute of Credit Management (CICM),)[3] PPR data is being used to review whether businesses are meeting the standards of the Code and paying their suppliers promptly.

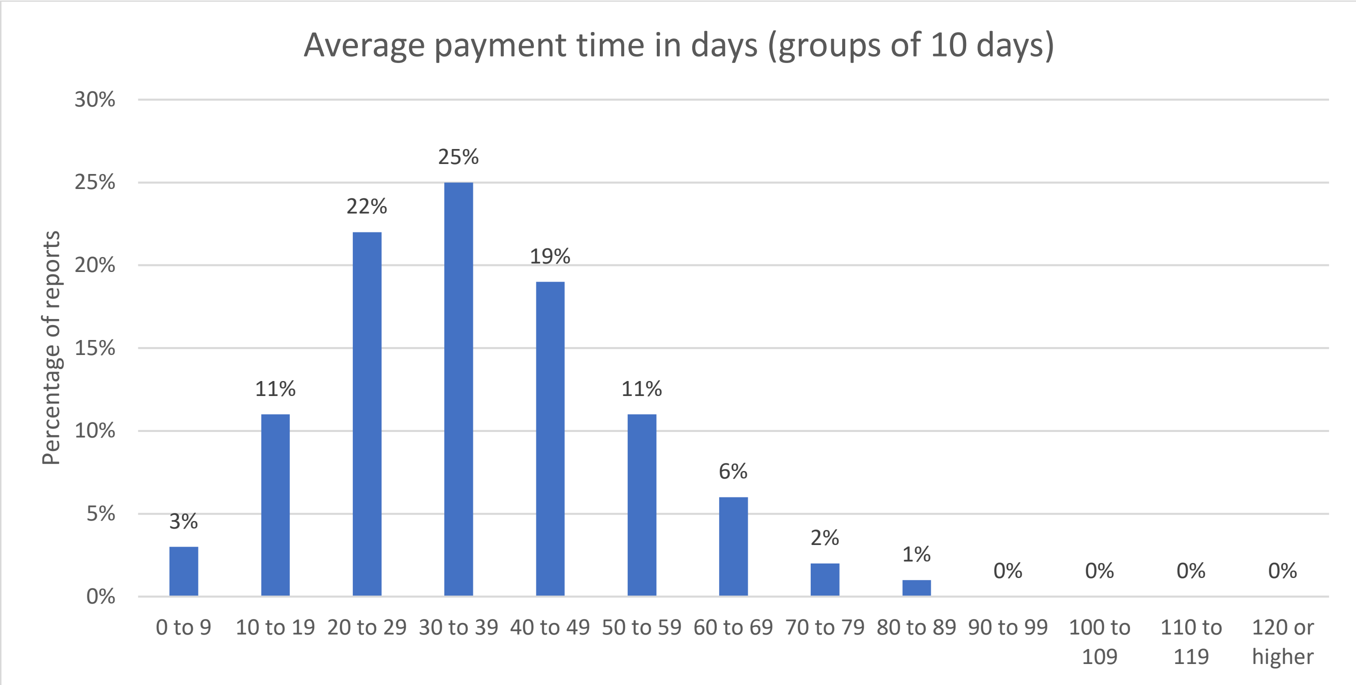
Government will be taking a tough approach with those businesses that have not yet reported or have reported data incorrectly. This will ensure that relevant data is collected, and the accuracy of data supplied increases confidence in the data so that more businesses can use it confidently. Auditing the data would ensure a clean and accurate high-quality dataset which can then be used by relevant bodies to create league tables and to rely on published data when considering entering into contracts.

A number of large businesses are keen to provide a greater level of information through PPR, which could provide more information for SMEs to consider. For example, a facility could be provided on the reporting website to enable businesses to report voluntarily on inter-company transfers and payments to SMEs. Whilst this will not change the headline reported figures, it enables businesses to provide more granularity should they wish to do so.

[3] CICM Press release - 29 April 2019

We want to recognise good practice and so will use PPR data to proactively target businesses who meet the thresholds for payment performance in relation to the Prompt Payment Code to encourage them to sign the up to the Code.

Distribution of reported average time taken to pay invoices, October 2017 to April 2019 (*based on 15,245 reports, of which around 1,500 reports did not include an average time to pay*)



Prompt Payment Code

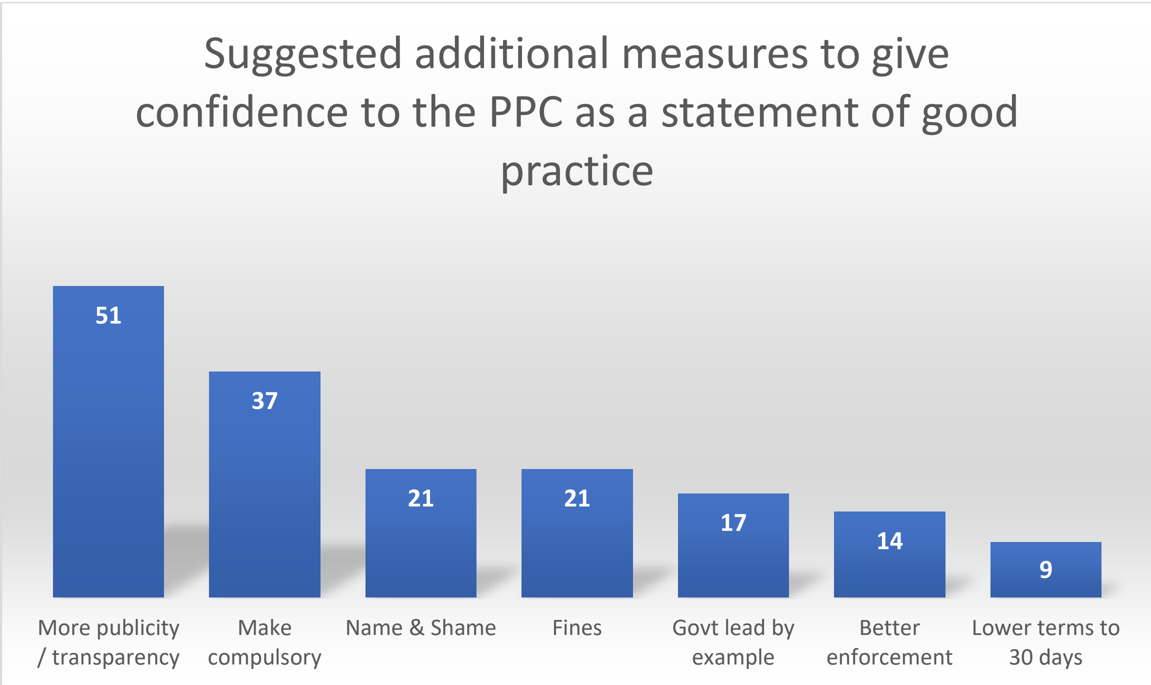
The Prompt Payment Code (the Code) was set up by the Chartered Institute of Credit Management (CICM)[4] on behalf of government, in order to promote a culture of prompt payment. Signatories to the Code agree to pay 95% of invoices within 60 days and work towards 30 days as normal practice, plus commit to other standards of good practice such as not retrospectively changing payment terms. The Code also requires signatories to give clear guidance to suppliers on payment procedures, ensure a system for dealing with complaints and disputes is communicated to suppliers and to avoid any practices that adversely affect the supply chain. As payment practices have knock-on impacts through the supply chain, the Code also requests that lead suppliers in a supply chain encourage adoption of the Code throughout their own supply chains.

As of the end of April 2019, nearly 2,300 organisations were signed up to the Code. The Code's signatories make a public commitment to pay on time and pay fairly. Signing the Code acts as a signal of quality in terms of payment practices for other businesses considering doing business with the signatory businesses and becoming a signatory to the Code represents a statement of good practice within the business community.

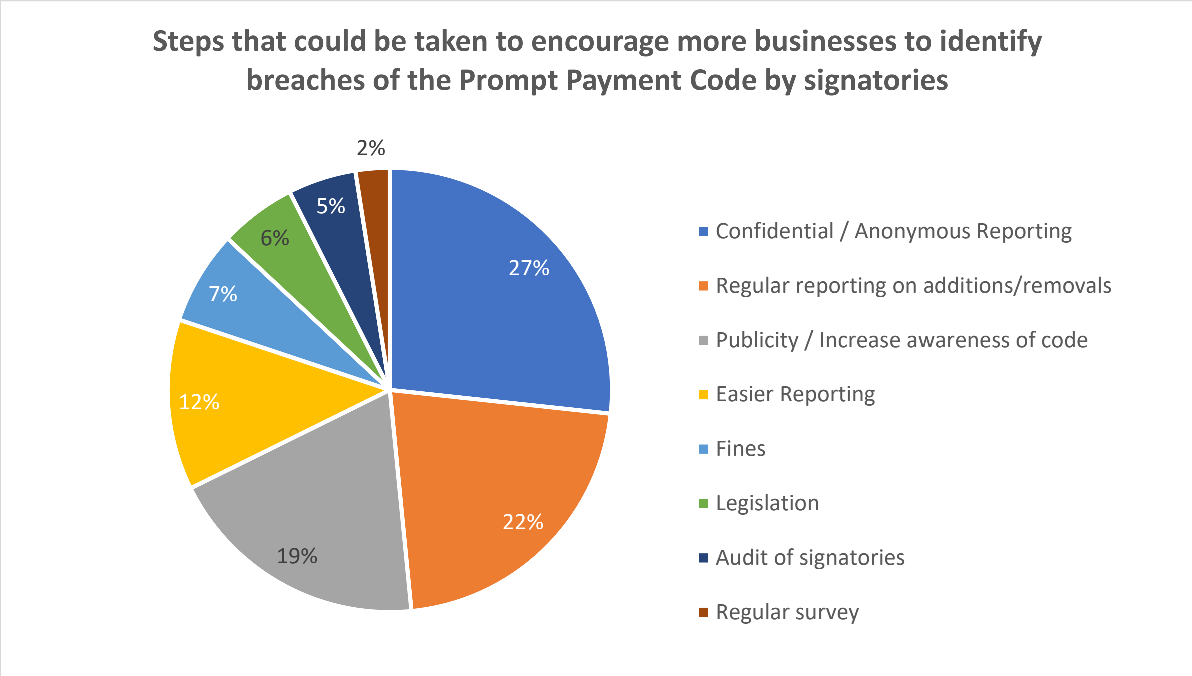
[4] Prompt Payment Code

In October 2018, government announced a new, tough and transparent compliance regime to ensure the Code is rigorously enforced. This included the Commissioner joining the Prompt Payment Code's Compliance Board to support his role in tackling late payment. Secondly, the Compliance Board was to consider all complaints made about compliance as part of regular reviews, and will be transparent in its decision making, publishing decisions made and the details of signatories who are removed because of poor practice. It was also announced that Government would consider further reform to the Code, including whether the Commissioner should have a greater role in its administration.

There was strong support for additional measures being needed to give confidence in the Code, as indicated by 89% of those who responded to this question. This is a view that is shared consistently across different organisations.



Various ideas were put forward to encourage more businesses to identify breaches of the Code by signatories. The idea of anonymous reporting was also raised in roundtable meetings and is one mechanism that aims to mitigate the imbalance of power existing between businesses.



One of the proposals most strongly supported is moving responsibility for the Code to the Commissioner, with over three quarters of respondents supporting this. Respondents indicated that streamlining payment issues under the Commissioner made sense and was joined-up, as it would increase the visibility of the Commissioner measures and ensure SMEs are clear they have a body to turn to for advice.

The CICM has done a great job of setting up and running the Code over the last ten years and now with the creation of the Commissioner's role at the end of 2017, government believes it makes sense to bring these measures under one umbrella. This will provide the Commissioner with a comprehensive outlook to affect culture change in unfavourable payment practices. It will also provide an easier way to navigate the landscape on payment issues for Britain's 5.7 million small businesses. Alongside that, we believe the Code should be reformed and strengthened so it plays a more important role in setting best principles in payment terms and practices and driving culture change. We will work with CICM and the Commissioner to engage with Code signatories and wider industry in shaping those reforms and delivering a managed transition.

We want to increase the number of people signed up to the Code, where good practice can be recognised by their customers and suppliers. Signing up to the Code is, and will remain voluntary, so we will be working with the Commissioner and trade bodies, including CICM, to help increase the number of businesses on the Code, including targeting those we know are already meeting the standard through their PPR data.

Board level responsibility

The Call for Evidence has helped identify several causes for long payment terms and late payment, with the imbalance of power between business by far the most common of reasons given. This suggests a belief that long payment terms and late payments are partially a conscious strategic decision from some businesses. It was also clear that respondents felt more should be done at Board level.

Increasing board level responsibility will ensure that late payments are being discussed at the highest level of organisations. Furthermore, it will increase the visibility of companies' payment policies and who is responsible for them, allowing other businesses to engage the appropriate person with relevant issues and concerns.

The Payment Practices Reporting duty for large businesses has started to improve Board level responsibility for payment practices.

The Audit Committee of a company, which includes Non-Executive Board members, has an important role to play in considering the integrity of a company's financial statements and the financial controls in place. In the 2019 Spring Statement, the Chancellor announced that government will require large companies' audit committees to review payment practices and report on them in their annual accounts. This will further elevate payment practices to Board level, increase transparency and complements a new reporting obligation, referred to below, that came into force in January 2019[5].

We are working through the implementation of the Chancellor's Spring Statement announcement with the Financial Reporting Council (FRC). This will preferably be implemented through guidance that clearly sets out the expectation that Audit Committees will review payment practices and report on them in their annual reports. But if necessary, we will consider legislation to ensure that the issue of late payments is given sufficient attention by the Boards of larger companies.

As mentioned above, under a new strategic report requirement, large companies must include a statement in their directors' report summarising how the directors have had regard to the need to foster the company's business relationships with suppliers, customers and others, and the effect of that regard, including on the principal decisions taken by the company during the financial year.

We are also asking the FRC to review how well payment practices are reflected in the first year of the new reporting requirement, which will inform our future thinking on this issue. The requirement applies to c.15,000 both listed and private companies.

Government leadership

From 1 September 2019, any supplier who bids for a government contract above £5m per annum will be expected to pay 95% of invoices in 60 days across all their business. Any supplier who is unable to demonstrate that they have systems in place that are effective and ensure a fair and responsible approach to payment of their supply chain may be excluded from securing government contracts. This is the same standard as set by the voluntary Prompt Payment Code, and a useful indicator of good practice expected by Government.

In April 2019, government sent letters to more than 10,000 businesses, including government's strategic suppliers, warning them about new rules on prompt payments to their suppliers. The new measures follow further moves to level the playing field for small businesses, including an ambition to pay 90% of government's undisputed invoices from SMEs within five days and requiring strategic suppliers to advertise supply-chain opportunities worth more than £5m on government's Contracts Finder website.

[5] FRC Guidance on Strategic Report

Suppliers that are not being paid on time are also able to raise complaints and concerns directly to government through the Public Procurement Review Service[6], formerly called Mystery Shopper, which since 2011 has helped speed up payment of over £6.7m stemming from government contracts.

Government is also making sure that payment performance is being addressed at the Board level within Departments. In November 2018, we announced that all Government departments will be asked to nominate a non-executive director responsible for prompt payment who will:

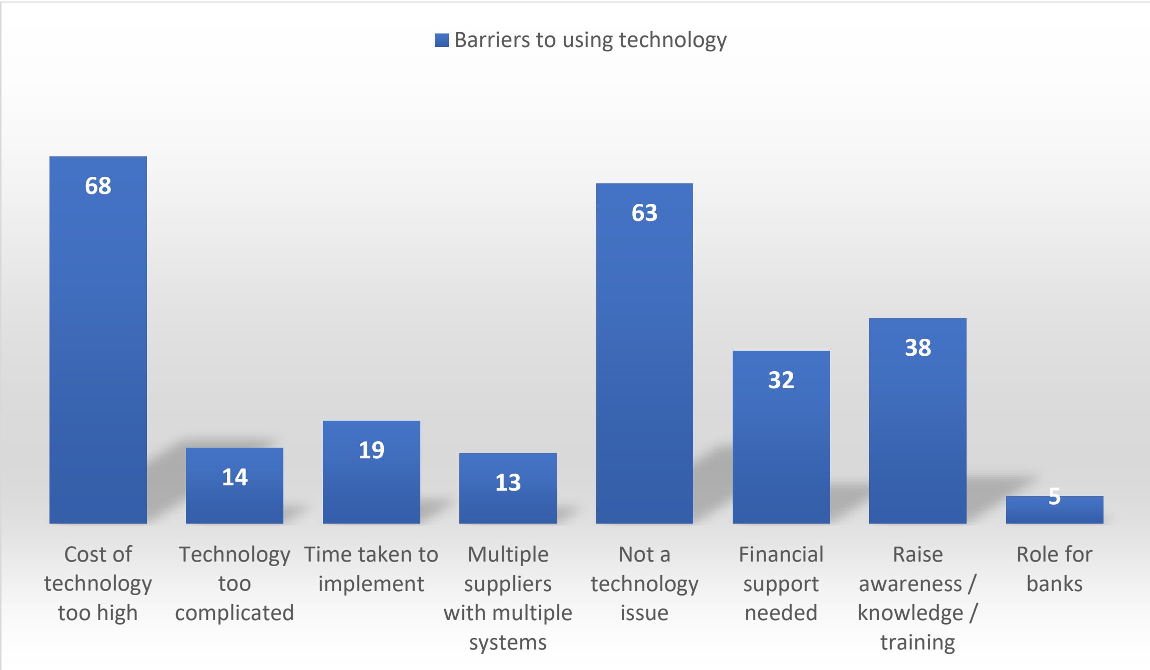
- improve payment practices both in the department and through its supply chain, and
- explore how better to use technology and AI to make payment processes more efficient.

[6] Public Procurement Review Service

Technology and Finance

Technology can make payment practices more efficient and businesses more productive. International evidence suggests that UK businesses' adoption of technology lags behind the best performers in the EU. Some organisations are starting to promote innovative technologies as a solution to the payments process but more needs to be done.

A range of views were expressed on the main barriers to using technology to enhance the payments process. Many businesses consider the cost of technology as a barrier, particularly the upfront investment required and many of the other responses suggest there is a reluctance to invest in it, as well a lack of awareness and knowledge of what technology is appropriate.



Although there was good awareness of finance options available to help manage long payment periods, respondents highlighted a number of barriers to accessing appropriate finance – primarily that it was too costly, too complicated and exploitative to SMEs. Alongside that, there is a wider issue of a lack of transparency in company accounts which can help to disguise debt linked to a supply chain offer. This is an issue that was uncovered following the collapse of Carillion.

Business Basics Fund

Late payment is a drain on productivity, with 45% of respondents stating that businesses were unable to invest in new equipment and staff, which then impacts on a company's future growth and ability to increase their own revenue.

The use of technology can improve the administrative processes that underpin business operations such as streamlining invoicing, payment and credit management. Over 30% of those who responded to the Call for Evidence suggested that it is the processing of invoices which often leads to long payment terms and delays in payment, with time poor small businesses spending valuable time tracking and chasing late payments. Much of this can now be automated, allowing staff time to be focused on generating revenue.

The £9 million Business Basics Programme[7] was announced in the Industrial Strategy, to test innovative ways of encouraging SMEs to take up the proven technology (such as accountancy or CRM software) and business practices that can boost productivity.

With this in mind, we will launch a Business Basics fund competition up to £1 million, looking at the administrative processes that businesses so rely on, including a focus on payment technology.

Government also believes there is a role for the Commissioner to run a campaign to promote technological solutions to SMEs to reduce late payment, improve cash flow and encourage better credit management. This fits with the Commissioner’s role in offering advice and guidance on payment matters to SMEs.

Access to finance

Whilst ensuring businesses are not subject to unfair payment practices in the first instance is the priority, it is also important that businesses of all sizes are able to access affordable and appropriate mechanisms to finance themselves at times when payment issues are affecting the business. The Government-owned British Business Bank (BBB)[8] works to promote the provision of better information in the market to increase smaller businesses’ understanding of the finance options available to them.

One of these options is invoice finance, whereby the supplier assigns the amounts owed to them to a finance provider who in turn advances a proportion (typically 80%) to the company. The balance, less the provider’s fee, is transferred once the customer has paid. Until recently, this option was denied to many SMEs by contract terms imposed by their customers, prohibiting the assignment of the amounts owed to them. Government acted to give suppliers the freedom to use this type of finance and, as from 31 December 2018, new regulations mean that these restrictive contract terms can no longer be enforced. The overall benefit to the economy has been assessed at just under £1 billion.

Government is also working to improve access to finance for SMEs more widely, stimulating supply and demand through targeted interventions. Programmes operated by the British Business Bank are currently supporting more than £6.4 billion of finance to over 85,000 SMEs (as at December 2018).

The BBB’s website hosts an online advice platform, the Finance Hub, aimed at raising awareness of appropriate finance options for SMEs. This includes the Business Finance Guide[9], which sets out the different sources of finance available to businesses – from start-ups to SMEs and growing mid-sized companies. The guide is published in partnership with the

[7] Business Basics Fund
[8] British Business Bank
[9] Business Finance Guide

Institute of Chartered Accountants of England and Wales (ICAEW) and 21 other industry bodies.

Supply Chain Finance

Supply Chain Finance (SCF) is a globally recognised financial product designed to provide affordable finance to suppliers. The most customary form of SCF is Reverse Factoring which enables suppliers to obtain early payment or financing from a bank against invoices officially approved by their corporate customer. Unlike traditional factoring, the corporate customer both pays the bank and holds the liability.

Detailed information on the breakdown of SCF is not readily available, however the World Supply Chain Finance Report 2018 assessed that the SCF funds in use within the European market had reached $55Bn by the end of 2016.

There are a number of benefits of SCF. For the corporate customer they have a more resilient supply chain and their suppliers have access to short term liquidity. For the supplier, the cost of the finance should be competitively priced against the investment grade corporate customer that a smaller supplier is unlikely to have the same access to. Digitalisation of accounting systems has enabled SCF to reach heightened levels of sophistications and efficiency that minimise administration costs and time. The supplier should also have the flexibility to opt in and to determine the degree of early payment or financing it requires.

Though SCF offers a number of benefits to corporate customers and suppliers, challenges can arise in two main areas. Firstly, the majority of power lies with the corporate customer that could exploit SCF to fund their own business, for example through extending normal settlement terms with their suppliers. The supplier would then have to draw down early payment from the Bank to be paid in a reasonable period. Secondly, financial disclosure in respect of SCF can be opaque with corporate customers often classifying these short-term liabilities to the bank as “trade creditors”, with some disclosure in the accompanying notes. This can lead to a lack of transparency as to the total levels of bank borrowing in the financial statements.

In December 2014 the FRC identified SCF as an arrangement likely to generate substantial inconsistencies in accounting practice. There is no single standard under International Financial Reporting Standards (IFRS) covering these complex supplier arrangements and transparency is dependent upon disclosure of the accounting treatment and underlying information in the financial statements of strategic suppliers and other corporations.

A high-profile example of disclosure and reporting was Carillion’s use of SCF. In the final year of trading, the Company extended standard payment terms to 120 days and in effect their Early Payment Scheme was the way for suppliers to receive prompt payment. A further criticism was that the banks were unaware of the additional exposure they had to Carillion through SCF as these facilities were over and above the banks’ primary lending to the company. In the final analysis Carillion’s net debt figure of £900m excluded £500m of SCF that had been advanced to trade creditors.

With this in mind, government will encourage industry to develop best practice on supply chain finance, to ensure SMEs have access to finance they need under fair terms. This would not be legally binding but would set out what good looks like to help SMEs better understand options and raise standards.

Government also wants to bring greater transparency to how supply chain finance is reported in company accounts and assessed in audits, working with the FRC to develop guidance and build into their sampling of companies' accounts. This addresses the Carillion type issue where their levels of bank borrowing were not clear in their financial statements.

Annex A – list of organisations who provided responses

4Networking & my own business

A. Alexander & Son (Electrical) Ltd

Aardvark Marketing

Aben Bookkeeping

AES Digital Solutions

Alastor Contractors Ltd

Alba Facilities Services Ltd

Albion Environmental Ltd

Aldermore

Allanpark Consultants Ltd

Ara Hygiene Ltd

Arcadis - UK Region

Arch Consulting

Arch Henderson LLP

Archway Roadmaster UK Ltd

Ardler Ltd.

Argyll & Bute Council

ARJ CRE8 Ltd

AseroSolve

Association of Accounting Technicians (AAT)

Association of Chartered Certified Accountants (ACCA)

Association for Consultancy and Engineering (ACE)

Association of Convenience Stores (ACS)

Association of Ductwork Contractors and Allied Services (ADCAS)

Association of Independent Professionals and the Self Employed (IPSE)

Association of Professional Staffing Companies (APSCo)

Auxilium Legal Ltd

Aviva

Axiom NDT Ltd

B2B Marketing Global Ltd

BAE Systems

BankSearch Information Consultancy Ltd.

Barker Ross Group Ltd

BBXUK

B-DACS Ltd

Beaton + McMurchy Architects Ltd.

Beaver Bridges

Belinda Knight Consultancy Limited

Bericap UK Limited

Bizzy Bodyz

Bobath Scotland

Bonnar Sand and Gravel Co Ltd

Brave Few - Brand Activation agency

British Chambers of Commerce

British Printing Industries Federation (BPiF)

British Retail Consortium (BRC)

Builders Beams

Business for Scotland

CCR3 Group

CELCAT

Central Partitions and Screeds Limited

Chartered Institute of Arbitrators (CIArb)

Chartered Institute of Credit Management (CICM)

Chartered Institute of Procurement and Supply (CIPS)

Cheetham Hill Construction Ltd

Civil Engineering Contractors Association (CECA)

Cocoonfxmedia Ltd

Compass Financial Recovery & Insolvency Limited

Confederation of British Industry (CBI)

Connect

ContractPod Technologies Limited

Corky & Co.

Cornelle Communications

County Safety Services Ltd t/a CSS Worksafe

Creative Words Ltd

Credit Protection Association (CPA)

Cubic Partners

Cycle Works

DaHa Group Ltd

Daisy Bee Design Ltd

Dave Kelsall Ltd

Defence Contracts Experts Ltd

DJ Laing Contracts Limited

Douglas Management Systems Consultancy

Drones on Demand Limited

DSTO Ltd T/A Head2Toe

ECA & BESA

Emmerich Berlon Limited

Engage Digital Ltd

Enisca

Ernst & Young

European Instruments Ltd

ExecSpace Limited

Experisys IT Ltd

Farm & Land Services Ltd

Federation of Master Builders

Federation of Small Businesses (FSB)

Fordham Henderson Consulting & The Association of Business Mentors

Freelance journalist

Freelancer Club

Fresh Future Ltd

Genesis Initiative

George Beattie & Sons Ltd

Glasgow City Council

Glass Scotland Ltd

Glenfield Electrical Ltd

Gracefruit Ltd

Grosvenor Britain & Ireland

Happy Energy Solutions Ltd

HCRG

Hitachi Capital

Horner + Maclennan

Icecream Architecture

iMultiply Resourcing

Industrial Door Engineering Limited

Institute of Directors (IoD)

Institute of Practitioners in Advertising (IPA)

Interpublic Group

IT Governance

It’s Promotional Ltd

Jetmasters Ltd

Jim Rowebot Limited

JNS Lift Ltd

John Gilbert Architects

John Merison

Kapow Content

Karen Woolven Floral Design Retail Ltd

Kickstart Mentor Ltd

Laing O'Rourke

Landscape And Forestry Services Scotland Ltd

Language Empire Ltd

Leask Marine Ltd

Linxs Consultancy Limited

Loch Lomond & The Trossachs National Park Authority

Lux Nova Partners Limited

Martek Drones Ltd (also trading as Coptrz.com)

Matt Thornton Limited

Max Fordham LLP

Member of Government's SME Advisory Panel

Mentesana Ltd

Merco Medical Staffing

Merlx Electrical

MG & Family Ltd

Minuteman Press Dunfermline

Mistletoe House

MJR Group SW

MLM Group

MM Miller (Wick) Ltd

Modern Human Design Ltd

Money Advice Trust

Montpellier International Consulting Limited

Mother London Limited

Multiply

Multispace Systems Ltd

Munro Wilson Ltd

Nash Sports and Work Wear

National Farmers' Union (NFU)

National Federation of Builders (NFB)

New Wave Images UK

Newclay Products Limited

Nomasonto Engineering Projects

North East falconry

Odesma Ltd

Oxygen Finance

P1 Contractors

Pact

Parable Arts

Paramount Care Agency Limited

PaySavi Ltd

Pirtek

Playfords Limited

Premier Decorators (Glw) Ltd

Production Attic Ltd

Professional Service Providers Alliance (PROSPA)

Proterra Energy Ltd

Pursuit Vision Ltd

Plymouth University

Qmx Laboratories Limited

Recruitment & Employment Confederation (REC)

Respite Now cic

Ridgeway Consulting

RMS Construction

RTS Forestry

Safe-Electric (Nationwide) Ltd

Sage

Sandra Wilson Consulting

SCWS Limited

SEC Group

Shetland Islands Council

sixfootstudio LLP

SJD Associates Ltd

Skills Training Group

Small Business Commissioner

SMS Ltd.

SPAEN

Sped Consultancy Ltd

St Andrew's First Aid

St Andrews Management Centre

Stort Chemicals Ltd

Strathesk Resolutions Ltd

Swallow hygiene

Sycamore Process Engineering Ltd

T&RS Engineering

Taylor and Fraser

Tendercare Ltd

The Apprentice Store

The Content Type

The Cult PR London Ltd

the Forum of Private business

The Freedom PA

The Greendealshop.com Limited

The Institute of Workplace and Facilities Management (IWFM)

The Railway Consultancy Ltd

The Structural Partnership Ltd

The Viewpoint Organisation (Europe) Ltd

The Ward Group

Think IT Recruitment Ltd

This Little Piggy

Tilda Limited

Tipple Associates Ltd

Tkm Consulting

Tower Staff Construction Ltd

Transport Scotland

Trust-hub Ltd

TTS Environmental Ltd

UK Finance

W Brown Roadworks Ltd

Warm Front Ltd

Warm Puppy Ltd

Welgo Office Equipment Ltd

Wheal Jane Consultancy & Wheal Jane Enterprises t/a Carnon Contracting

WhittleMedia Ltd

William Coates

Willis Consultancy

Working Capital Repatriators Ltd

X2Furniture

Xero

Annex B – types of organisation that responded

Business representative organisation/trade body	33
Central Government	1
Charity or social enterprise	5
Individual	13
Large business (over 250 staff)	15
Legal representative	1
Local Government	3
Medium business (50 to 250 staff)	24
Micro business (up to 9 staff)	100
Small business (10 to 49 staff)	68
Trade union or staff association	1
Other	19
Total	**283**

This publication is available from: www.gov.uk/government/consultations/creating-a-responsible-payment-culture-a-call-for-evidence-on-tackling-late-payment

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