

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|---------------------------------------|
| Title: Small Business Commissioner IA No: Lead department or agency: Department of Business, Innovation & Skills Other departments or agencies: | Impact Assessment (IA) | |
| | Date: 11/09/2015 | |
| | Stage: Final | |
| | Source of intervention: Domestic | |
| | Type of measure: Primary legislation | |
| Contact for enquiries: Thomas Sadler +44 (0)20 7215 6815 | | |
| Summary: Intervention and Options | | RPC Opinion: Awaiting Scrutiny |

| Cost of Preferred (or more likely) Option | | | |
|-------------------------------------------|----------------------------|------------------------------------------------------|---------------------------------------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2014 prices) | In scope of One-In, Two-Out? Measure qualifies as |
| -£12.5m | £0m | £0m | No Zero Net Cost |

What is the problem under consideration? Why is government intervention necessary?

There have been concerns that small businesses are more vulnerable to unfavourable or unfair practices and often do not have the resources to challenge them. For small firms, negotiating a contract with a larger business can be challenging. Difficult issues can arise during initial negotiation of terms, or where the small business is asked to agree to vary or include new commitments in an existing contract or relationship. The Government is determined to see small businesses thrive and grow. As part of the Enterprise Bill it is proposing to establish a service to complement existing provision of dispute resolution services and lead a culture change in how businesses resolve – and ultimately avoid - commercial disputes.

What are the policy objectives and the intended effects?

The principal objective of the Small Business Commissioner is to enable small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other, promoting fair treatment for all.

The intended effects are that the the Commissioner will act as a strong disincentive to unfavourable payment practices, work with larger businesses to help them improve their practices, and build the confidence and capabilities of small businesses to assert themselves in contractual disputes and access information and advice so that they become able to negotiate more effectively.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)


Option 0: Do Nothing

Option 1: Creation of a Small Business Commissioner. This would involve providing:

- General advice and information provided online and through social media with the aim of helping small firms avoid disputes in the first place, or resolve them early;
- Where appropriate, signposting to sector regulators, ombudsmen services, or external mediation and conciliation service providers to assist parties to reach a resolution to a dispute;
- A complaint handling function to look into complaints by small businesses about payment issues with a medium or large business.

| | | | | | |
|------------------------------------------------------------------------------------------------------------------------|--|---------------------|-----------------------|---------------------|----------------------|
| Will the policy be reviewed? It will be reviewed. If applicable, set review date: 05/2019 | | | | | |
| Does implementation go beyond minimum EU requirements? | | | | Yes / No / N/A | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro Yes | < 20 Yes | Small Yes | Medium Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | | Traded: | |
| | | | | Non-traded: | |

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY:  **Date:** 11.09.2015

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

| Price Base Year 2015 | PV Base Year 2016 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) | | |
|-------------------------|----------------------|-------------------------|---------------------------------------|----------------|------------------------|
| | | | Low: Optional | High: Optional | Best Estimate: -£12.5m |

| COSTS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|--------------------------------------------|--|-------------------------------------------------------|-------------------------------|
| Low | | | | |
| High | £1.6m | | £1.6m | £15.1m |
| Best Estimate | £1.1m | | £1.3m | £12.5m |

Description and scale of key monetised costs by 'main affected groups'

Set-up costs will be £1.1m and will include the design of the website, staff recruitment and staff IT set-up. The website is expected to handle enquires on 390,000 disputes from 70,000 businesses. Running costs will be £1.3m per year, and includes the full costs of the Commissioner, their office, and staff needed to handle 500 complaints a year.

Other key non-monetised costs by 'main affected groups'

The direct costs to business from this policy e.g. from compliance are estimated to be zero as the Government is not proposing at this stage to change or introduce substantive law to make particular practices unlawful.

| BENEFITS (£m) | Total Transition (Constant Price) Years | | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--------------------------------------------|--|-------------------------------------------------------|----------------------------------|
| Low | 0.0 | | 0.0 | 0.0 |
| High | 0.0 | | 0.0 | 0.0 |
| Best Estimate | 0.0 | | 0.0 | 0.0 |

Description and scale of key monetised benefits by 'main affected groups'

The benefits will come from an improved culture of fewer commercial disputes or improved access to less costly ways of resolving them. It has not been possible to quantify the potential improvements to small business cash flow and investment that will come from reducing the number and difficulty of commercial disputes.

Other key non-monetised benefits by 'main affected groups'

The Commissioner will enable small businesses to access information and advice to help them negotiate more effectively, and improve their ability to innovate and invest. In the long term it may encourage broader culture change, improving the efficiency of business operations.

Key assumptions/sensitivities/risks

Assumptions have been made about the likely demand for the services of the Small Business Commissioner and also the cost of handling a complaint, based on a survey of businesses and similar services. Costs will depend on the IT service delivery and the number of complaints received from small business.

Discount rate (%)

BUSINESS ASSESSMENT (Option 1)

| | | | | |
|---------------------------------------------------|-----------|------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | | | In scope of OITO? | Measure qualifies as |
| Costs: | Benefits: | Net: | No | Zero net cost |

Introduction

1. Chapter 2 (Jobs for all) of the Conservative Party Manifesto 2015 committed to establish “a new Small Business Conciliation Service to mediate in disputes, especially over late payment”. This measure was announced in the Queen’s Speech, with primary legislation being taken forward through the Enterprise Bill. The Government is seeking to improve the environment within which businesses operate to enable them to grow and become more productive.
2. At consultation, Government gave this new service the title of ‘Small Business Commissioner’ to reflect its proposed remit. The aim of setting up a Small Business Commissioner is to empower small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other, promoting fair treatment for all. The Commissioner will give general advice and information to small business about dispute resolution and provide signposting to services that can mediate in or otherwise resolve or assist with disputes. It will also consider complaints by small business suppliers about payment related issues and report back on its findings.
3. This Impact Assessment will be updated at relevant stages as the Bill passes through Parliament in the light of new information.

Background

4. The Government is working to make UK the best place to grow and start a business. The performance and activity of small businesses is vital to the UK’s economic growth. Small businesses (those with fewer than 50 employees) are responsible for 48% of UK private sector employment – employing 12.1 million in 2014. And they are responsible for around a third of private sector turnover – with combined annual turnover of £1.2 trillion.

Payment Issues

5. Some small firms suffer because of an imbalance in bargaining power when dealing with larger businesses. Even though one party to a contract cannot make a valid variation to it without the agreement of the other, some recent cases have shown that large businesses seem to have benefitted from a bargaining power imbalance to extract commercial advantages from small suppliers. In a Federation of Small Businesses (FSB) survey, one in six small firms reported “supply chain bullying” in the past two years; and five per cent reported having to pay to join or stay on supplier lists (“pay to stay”).
6. These practices can be breaches of contract, which can include non-payment, failure to deliver services or goods, and being late with goods or services without a reasonable excuse. Late payment when a business has been supplied goods or services on credit, but fails to pay within the agreed term is a breach about which particular concerns have been raised (see box 1). Legally, if no explicit payment terms have been agreed, the business awaiting payment may charge statutory interest after 30 days.
7. Many of the disputes commonly experienced by small businesses do not breach the law. For example, a small firm negotiating a contract with a larger business may feel intimidated to accept unfair terms in negotiations, conceding commercial advantages rather than walking away from a proposed contract or refusing to agree to a change.
8. Small businesses are not always sure where to turn to help them sort out disputes with other businesses. There are existing dispute resolution bodies which provide valuable services. But for general contractual and payment issues, including where smaller businesses feel that other businesses treat them unfairly, not enough small businesses are

able to settle their problems with larger corporations sufficiently quickly and inexpensively while maintaining their business relationships.

Box 1: Late Payment

Late payment is a particular issue for small businesses: it limits their growth and productivity. Every year, thousands of businesses experience severe administrative and financial burdens, simply because they are not paid on time. Late payment stops these businesses – small businesses in particular – from developing their ideas, investing in growth and creating new jobs. In the worst cases, late payment has driven them to insolvency.

In January 2015, BACS reported that 59% of UK small and medium-sized businesses were impacted negatively by late payments, with a total debt burden of £32.4 billion. The average small business was waiting for £31,901 of overdue payments. Their research also showed that the volume of late payments had almost doubled since 2008. In part that was due to the general economic climate but there was also a wider cultural trend of large businesses using late payment as a means to improve cashflow. In June 2015, BACS's most recent research showed that small and medium-sized businesses are still waiting for £26.8 billion of late payment debt.

The FSB survey of its members in 2014 revealed that 51% had experienced late payment within the previous 12 months. Figures from by the Institute of Directors (IoD) in December 2014 found that two-thirds of its small and medium-sized members were having problem getting timely payment of an invoice, with damaging knock-on effects: late payment by one business could push the problem farther down the supply chain, potentially affecting many more firms.

The Consultation

9. The Government launched a discussion paper on establishing a Small Business Commissioner on 26th July 2015. The consultation was open for 4 weeks and closed on 21st August. The discussion paper set out the Government's thinking about the Commissioner and the functions it could offer.

10. The discussion paper outlined three potential functions for the Small Business Commissioner:

- **Providing information, general advice and signposting**

This would usually be the first point of contact for small businesses. They would be offered information and general advice on how to avoid contractual situations that leave them powerless to protect their interests. Then, if things do go wrong, they could find out about ways to resolve disputes themselves, where possible. If needed, the small business would be signposted to a relevant external dispute resolution service (e.g. an Ombudsman) or may be offered mediation or the Commissioner's own complaint handling service.

- **Resolving disputes through mediation**

If the two sides couldn't agree on a contractual issue, the Commissioner could offer a voluntary mediation process to help small businesses sort out issues quickly and affordably without having to take legal action.

- **Dealing with complaints**

The discussion paper proposed that the Commissioner would be able to look into complaints and declare its findings. This would prove particularly useful where one of the parties were unwilling to take part in voluntary mediation or if a small firm alleged that unfair business practices were causing it harm but the issues complained of are lawful. An independent view may well help to resolve the problem.

11. Respondents were asked to offer their opinions on the problem, and the Government’s proposed solutions. In total there were 97 responses to the discussion paper which were primarily from business representative bodies, trade organisations and professional bodies.
12. In addition to the formal consultation, BIS conducted five roundtable events with a range of stakeholders including small and large businesses, business representative organisation (including the CBI, FPB, FSB, IoD, BCC) and existing public and private sector providers (Ombudsman, mediators etc.).
13. To further develop the evidence base, BIS also commissioned a representative survey of around 800 small and medium sized businesses (this re-surveyed businesses from the Government’s 2014 Small Business Survey). BIS also commissioned a survey on Citizen Space with 34 responses from small business. Both surveys underpin the cost-benefit analysis set out in this document.
14. The direct costs to business from this policy e.g. from compliance, are likely to be limited, as the Government is not proposing at this stage to change or introduce substantive law to make particular practices unlawful. Furthermore, the design of the service and its proposed functions, is intended to avoid imposing regulatory or compliance burdens on business. The aim here is to drive a culture change in how businesses deal with each other to ensure fair treatment for all.
15. The discussion paper set out some of the payment practices our stakeholders had told us that could cause disputes between small suppliers and larger customers, see table 1.

Table 1: Types of Unfair Practice

| | |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Extended payment terms | Use of excessively long payment terms – whether proposed in the initial contract or by contract variation. |
| Prompt Payment discounts | Discounts businesses request for paying early or on time. For example, a firm that has agreed to pay 60 days following receipt of an invoice may also ask for an automatic discount of 3% if they pay on or before the 60th day. |
| “Pay to Stay” clauses | Flat charges which businesses levy on suppliers either as a requirement to be on a supplier list, or packaged as an investment into future business opportunities. It is often indicated that non-payment will result in de-listing. |
| Retrospective discounting | Some firms seek to apply retrospective discounts or ‘balance sheet bonuses’ to outstanding money owed to a supplier. This involves changes to the terms of the contract with the supplier after a contract has been agreed. |
| Stocking & listing fees | A cash fee paid up-front by a supplier to guarantee shelf space for a new line. Alternatively, businesses may require suppliers to pay listing fees to cover the cost of the administration of introducing new product lines. |
| Marketing contributions | Payments by suppliers towards the cost of advertising certain products and/or to cover the cost of price |

| | |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | promotions. |
| Damage/waste payments | Payments requested from suppliers to cover problems ranging from poor stacking of pallets to putting bar code stickers in the wrong place. The payments may include lost profits, the cost of rectifying the problem and an administrative charge. |

Evidence from the Small Business Commissioner consultation July-August 2015

16. Over half of respondents to the Small Business Commissioner discussion paper cited evidence of unfavourable treatment by larger companies, and generally agreed that certain payment practices, including late payments can have serious consequences for smaller businesses. Only a small minority of respondents said that they did not have any evidence of unfair or unfavourable treatment of small businesses.
17. Of those who responded, most cited problems with late payment. One trade body elaborated to say that approximately 15% of their members who work on corporate insolvency cases said that late payments by customers for goods and services had been a primary or major factor in between 26% and 50% of corporate insolvency cases over the last 12 months (Jan 2013 – Jan 2014). Nine per cent said it was a primary or major factor in 51% or more of the corporate insolvency cases in the last 12 months.
18. One small business representative organisation stated that poor contractual practices such as retrospective changes to payment terms and breaches of contract such as late payment, reduce the economic and financial resilience of small businesses. For their members the persistence and the detrimental impact of unfavourable payment practices is a serious concern.
19. Many respondents (43%) expressed concerns about the practices listed in the table above (table 1), and stated that these practices have an impact on the day-to-day running of their businesses (or their members' businesses). Six per cent of respondents had concerns about some of the practices listed, but were less concerned about others. Nine per cent of respondents did not have concerns about the practices listed. Thirty-three per cent of respondents had either experienced (or their members had experienced) the practices listed and just seven percent of respondents said that they had not experienced any of these practices.

Evidence from consultation on 'grossly unfair payment terms' February 2015

20. These findings are backed up by the findings from the previous Government's February 2015 discussion paper on challenging grossly unfair payment terms. Twenty-nine responses were received from Small and Medium Enterprises (SMEs i.e. businesses with up to 50 employees) or organisations representing SMEs. Of these responses, 27 clearly stated that late payment and unfair terms were an issue for them or their members.
21. One representative organisation had undertaken a survey of its members on their experiences of payment in January 2015. The responses indicated that only 10% said that they were paid within 30 days more than 80% of the time, and that about 70% said they had been paid within 60 days. Another respondent said that in the first quarter of 2014, only 72% of public sector contracts were paid within 30 days.
22. One further respondent had conducted some research in February 2015 which indicated that:
 - 46% of their members felt that the inability to negotiate terms was a problem and that 12% saw it as a big issue; and

- 43% felt that businesses changing terms and conditions of payment without warning was problematic with 16% reporting that it was a big problem.

23. In terms of frequency over the previous 12 months, five respondents said they had experienced grossly unfair terms up to and including 50% of the time. One said it was over 75% of the time. Three respondents said that over 75% of SMEs were exposed to grossly unfair terms. One agreed with the Federation of Small Business' member feedback of 51% of SMEs having experienced these terms⁷.

24. Respondents generally agreed that late payments can have serious consequences for smaller businesses. One respondent explained that "These practices can be severely damaging for specialist businesses, especially SMEs, stunting business growth and consuming valuable time and energy in chasing payment that is owed." And another felt that their sector was jeopardized by the UK's late payment culture.

25. Respondents provided a wide variety of terms they considered grossly unfair, many of which were sector specific. The common ones were:

- Lower interest rates for late payments
- Excessively long payment terms
- Flat fees/"pay to stay"
- Discounts – either for prompt payment or applied retrospectively ("balance sheet bonuses")
- Making a (sub)contractor responsible for, or unable to challenge, a decision that was made as part of a wider project or further up the supply chain
- Clauses which allow the payer/client to withhold or delay payment or by imposing the right to withhold money for losses that might occur in the future

Existing attempts to address the problem

26. A number of measures both voluntary and legislative, as well as sector-specific measures have been implemented to tackle the culture of late payment. This includes:

- The voluntary Prompt Payment Code (the Code) was set up by the Institute of Credit Management (ICM) in 2008 on behalf of Government in order to promote a culture of prompt payment¹. It followed previous efforts, through the Better Payment Practice Group (1997), to improve payment culture with a partnership between government and business representative organisations².
- The Late Payment of Commercial Debts (Interest) Act 1998 created a statutory framework in the UK for tackling late payment. This was amended in August 2002 (when the 2000 EU Late Payment Directive was transposed into UK law) and again in March 2013 (when the 2011 EU Late Payment Directive was transposed into UK law)³.

¹ As of September 2015, 1,746 organisations had signed up to the Code, including 74 FTSE 100 companies. There has been a significant increase in membership following a campaign by Government and the ICM to drive up the number of signatories.

² In addition, further efforts are being made to increase voluntary commitments to improve payment practice in certain sectors. In May 2014 the Construction Leadership Council announced the agreement of Construction Supply Chain Charter. This Charter seeks to tackle some contractual and payment issues which specifically afflict construction supply chains and build upon the provisions of the Construction Act. Efforts to reduce payment terms to 30 days and the limited use of cash retentions will have a positive impact on the sector.

³ Few companies seek to exercise the rights provided by this legislation, especially against larger companies. Just 10% of businesses have considered using late payment legislation despite 22% of businesses having ended a business relationship with a customer because of

- Part 2 of the Housing Grants, Construction and Regeneration Act 1996 sets out a number of provisions that seek to address delays in payment:
 - A quick 28 day dispute resolution process for a dispute under a construction contract, via third party adjudication;
 - The entitlement to staged payments; and
 - “An adequate mechanism” in contracts to ascertain what should be paid and when.

- Part 8 of the Local Democracy, Economic Development and Construction Act 2009 made a number of changes to the payment and adjudication provisions of the Construction Act to deliver these improvements. Whilst this has improved culture around certain aspects of procurement, there is need for further commitments to prevent poor payment practices. This is set out below in relation to voluntary measures in construction.

- The Groceries Code Adjudicator Act was established in 2013 to ensure supermarkets act fairly towards their suppliers. Powers were provided to allow the investigation of complaints and arbitration in disputes, and to enforce the Groceries Supply Code of Practice (the Groceries Code). The Groceries Code is intended to remedy adverse effects on competition from supply chain practices which transfer excessive risks and unexpected costs to suppliers, and which restrict or distort competition in favour of larger grocery retailers. The Groceries Code covers the 10 biggest supermarkets. Time will need to be given to see the impact of the Groceries Code Adjudicator on payment in this sector.

- The Small Business Enterprise and Employment Act 2015 creates a statutory reporting requirement for the UK’s largest companies to report on their payment practices and policies.

Dispute Resolution

27. Furthermore, the consultation responses suggest that small businesses may not be aware of routes for dispute resolution such as ombudsmen (for certain sectors) or mediation/conciliation, or may be discouraged from litigating or pursuing alternative dispute resolution approaches because of perceptions of the likely time and cost (as well as the risk to their commercial relationship). The current landscape of dispute resolution is described in Box 2.
28. In terms of awareness of alternative dispute resolution Justice Jackson's 2009 report into the Costs of Civil Litigation found that: "the benefits of mediation are not appreciated by many smaller businesses." In addition a review into the "Use of Mediation by SMEs in Great Britain" to resolve employment disputes found small and medium sized enterprises are making "scant use of mediation" and while not the only issue, they found that knowledge and experience of mediation can overcome preconceptions about the cost and efficiency of mediation in small and medium sized enterprises.

Box 2: The Current Landscape of dispute resolution

In recent years the drive in the courts system to encourage alternatives to litigation has expanded the dispute resolution services available to businesses. Redress schemes (such as ombudsmen) in regulated sectors of the economy have also increased in number. However, provision remains uneven, with different arrangements in different sectors and low awareness among small businesses. Where a dispute involves an alleged breach of the law, businesses currently have a number of options open to them :

- a) The courts system urges potential litigants to consider a form of Alternative Dispute Resolution (ADR) rather than court action.
- b) If the potential litigants are prepared to participate in a process such as mediation, they are directed to information about providers; and for the small claims track (claims of up to £10,000) there is a free Small Claims Mediation telephone service.
- c) During court proceedings, the parties may be asked for evidence that they considered an alternative dispute resolution approach. Failure to respond to an invitation to participate or a refusal to participate might be considered unreasonable by the court and means they could face additional court costs.

For disputes that do not involve alleged breaches of the law, businesses can also access a variety of ADR services. In some sectors ombudsmen exist, some of whom – particularly in the regulated sectors – will consider complaints from microbusinesses (generally those with 0-9 employees although this can vary by ombudsman). This micro-business threshold covers more than 4.9 million of the just over 5.2 million businesses in the UK.

The Ministry of Justice provides a directory of private mediators. Fees vary according to the amount of money in dispute – e.g. £50 per party (plus VAT) for a 1-hour session for claims under £5,000 or £425 per party (plus VAT) for a 4-hour session if the claim is between £15,000 and £50,000.

There are also ADR schemes to help resolve disputes relating to public sector service delivery and contracting. For example, the Adjudicator Service handles disputes with HM Revenue and Customs, the Insolvency Service and the Valuation Office Agency.

Rationale for intervention

29. The Government is concerned that for small firms, negotiating a contract with a larger business can be challenging. Difficult issues can arise during initial negotiation of terms, or where the small business is asked to agree to vary or include new commitments in an existing contract. Government has been told that small businesses often feel intimidated and accept such terms (rather than walking away from a proposed contract or refusing to agree to a change) and there is concern that larger firms sometimes use their market power to impose unfavourable terms.

Box 3: BIS – BMG research

In order to further develop the evidence base in the area of commercial disputes between small businesses and large businesses, BIS commissioned additional research. The consultant (BMB) re-surveyed a random, representative sample of 814 respondents to the 2014 Annual Small Business Survey, who had previously consented to take place in further research. As medium businesses were over represented in the sample and single employee businesses were underrepresented, survey responses were weighted to represent the number of such businesses in the population. Analysis here uses the weighted answers.

The survey asked questions about

- the incidence of unfair practices they had experienced
- how many of them had led to a dispute and if this dispute had been resolved
- their opinion on the need for a dispute resolution service
- their experience of invoice financing

Unless otherwise referenced all evidence in the remainder of this impact assessment is drawn from the BMG research.

In addition, to the BMG survey, BIS also sought views on the nature of disputes through an online survey on citizenspace conducted in parallel to the discussion paper.

30. There is some evidence to suggest that the smaller the business the more likely it is to put up with problems rather than resolve them. In a 2013 Legal Services Board study into how small businesses resolve potential legal problems (including business to business problems such as trading and payments) single person businesses were shown to more often end up simply putting up with problems⁴.
31. Research commissioned by BIS and undertaken by BMG provides evidence that there is a problem which leads to poor outcomes for small firms which is due largely to an imbalance in bargaining power faced by small firms when dealing with larger businesses. It is due to a lesser extent to asymmetric information.
32. We will now consider these factors in turn.

Imbalance in bargaining power

33. In a relationship between larger businesses and smaller businesses, the smaller business is often in the weaker bargaining position. Exercising this power allows the large firm to extract a better deal from its suppliers than would otherwise be the case, for example by obtaining preferable purchasing terms from the smaller firm or paying late.
34. The BMG research found that 75% of businesses with under 50 employees either strongly or slightly agreed that the relative size or market power between small and larger businesses is the primary cause of unfair practices between businesses. This was also supported by 30 of the 33 responses from smaller businesses in an online survey that conducted in parallel to the discussion paper.
35. When asked 'what circumstances do you think commonly lead to practices which are unfavourable or may be unfair to one party' in the citizen space survey one third of the free text answers from smaller business respondents mentioned the different size of businesses.

⁴ Pleasance and Balmer (2013), In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey – a report to the Legal Services Board

36. There are many occasions where a smaller firm may have a concern about payment, payment practices or contractual terms which they felt was detrimental to their business but they did not take any action. The research found that 51% of smaller businesses experienced an unfair practice, but of these only 8% raised a dispute and the remaining 43% took no further action. Of this 43% of small businesses, 33% of small businesses agreed or strongly agreed that the relative market power between smaller and larger businesses is the primary cause of unfair practises, and 26% of small businesses would be likely or very likely to use a government service that provided information and advice on disputes.
37. Of those businesses that did experience a dispute, 40% said there had been an impact to their cash-flow.

Asymmetric information

38. For a market to operate effectively there has to be open and transparent performance information, across a range of metrics, available to both suppliers and customers. Customers require information on the quality of the good or service to make a sound judgement about the value added. Sellers, lenders and investors need to know the reliability of a buyer, borrower or entrepreneur to repay debt. This information should be available fully to both sides of the market. A lack of information on either or both sides may result in market failure. This is known as 'asymmetry of information'⁵.
39. Greater openness and transparency of information supports and promotes mutually beneficial trade, when both parties are acting in a fair way. Openness on payment performance allows for greater competition through more efficient pricing. An improved understanding of customer performance would allow suppliers to price or bid for contracts accordingly, and mitigate against the risk of late payment.
40. The research found that 14% of smaller businesses did not have access to the information and appropriate mechanisms (e.g. mediation) that they need to resolve a dispute with another business to their satisfaction, suggesting that this is a less of a problem compared to the imbalance in bargaining power between small and larger businesses. When applying this to the number of smaller businesses (5.2m) this estimates that around 730,000 businesses do not have the information they need.
41. In addition a review into the "Use of Mediation by SMEs in Great Britain" to resolve employment disputes found small and medium sized enterprises are making "scant use of mediation" and while not the only issue, they found that knowledge and experience of mediation can overcome preconceptions about the cost and efficiency of mediation in small and medium sized enterprises⁶.

Policy objective

42. The principal aim of setting up a Small Business Commissioner is to empower small businesses to resolve disputes and avoid future issues by encouraging a culture change in how businesses deal with each other, promoting fair treatment for all.
43. The Commissioner will give general advice and information to small business about dispute resolution and provide signposting to services that can mediate in disputes. It will also consider complaints by small business suppliers about payment related matters and report back on its findings.

⁵ The Green book : Appraisal and Evaluation in Central Government, Annex 1: Government intervention, P52, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf

⁶ Use of Mediation by SMEs in Great Britain, Dr Valerie Antcliff, Centre for Enterprise, Manchester Metropolitan University Business School

Options considered

44. The discussion paper “A Small Business Commissioner” published in July set out the Government’s initial proposals for establishing a Small Business Commissioner and the services that it could provide. The proposals put forward in the discussion paper form the basis of the preferred approach being discussed in this Impact Assessment. Following analysis on the consultation findings and consideration of other factors including cost implications, we have adapted the policy to ensure it will have real impact on the ground and offers value for money.

Providing information and advice

45. The majority of respondents (48%) of respondents thought the Commissioner should provide general information and advice to small businesses on a confidential basis, in relation to a dispute with businesses which are medium-sized or large. Nine per cent did not agree; 42% did not know or did not answer. Many welcomed a ‘government backed’ information source, and thought that general advice and signposting should be an essential part of SBC’s remit, as smaller firms are often unaware of where to access advice
46. There were mixed views on whether advice and/or information should be provided on a confidential basis. Some respondents were concerned that providing advice on a confidential basis may compromise the Commissioner’s ability to handle complaints. Others thought that confidentiality and anonymity to small businesses was important.
47. We propose that the SBC provides general information and advice related to dispute resolution and contract principles including options for resolving disputes. Given the general nature of the advice, issues around confidentiality – as covered in the discussion paper - fall away.

Mediation

48. Nearly half (48%) of respondents thought that the SBC should offer mediation (whether in-house or via a third party). However, many respondents thought that duplication of existing services should be avoided. This point was reinforced by participants at the stakeholder roundtables where in most cases there was consensus that the SBC should signpost to existing services and make full utilisation of private sector resources.
49. There is little evidence that intervention is required in the market for mediation. Instead the SBC will signpost to existing dispute resolution providers, rather than offer services in-house. However, stakeholders have told us that there is need for government to help small businesses enable access to the many valuable services already available.
50. The SBC will signpost to appropriate services e.g. sector ombudsman or regulator, existing independent advice service, approved alternative dispute resolution (ADR) provider or SBC’s own complaints handling function. For business to public sector disputes the SBC will signpost to sector ombudsman or regulator or other appropriate public sector body.

Complaints handling

51. In terms of complaints handling, a third of respondents agreed that the SBC should look into individual complaints. A third of respondents also believed that the SBC should make recommendations and/or take factors into account when reaching decisions. Our preferred options set out below is for the SBC to handle complaints from a small business supplier against a larger business, in respect of (i) payment issues and (ii) the larger business trying to prevent the small business from complaining to the SBC.
52. The Commissioner would request the information needed to consider the complaint, and give the respondent an opportunity to respond before making a decision. The SBC will

provide a neutral and non-binding decision on a complaint regarding a particular practice, act or omission; based on what is fair and reasonable in the applicable circumstances. Decisions may include recommendations as to how a complaint may be resolved. The SBC would also have the power to publish reports of decisions, which could include naming the respondent.

Reporting

53. A third of respondents agreed with the proposal for SBC to publish information about specific findings and produce an annual report.

54. Hence this Impact Assessment is based on two options:

1. Do nothing
2. The creation of a Small Business Commissioner (Preferred Approach)

Option 0: Do nothing

55. No action is taken. The existing status quo persists, with a significant proportion facing problems in their dealings with larger firms, either not resolving disputes quickly or cheaply or not being able to take any remedial action. This leads to sub optimal outcomes in terms of their ability to innovate and invest.

Option 1: Small Business Commissioner (Preferred Approach)

56. The Commissioner will provide general advice and information relevant to dealings and disputes between small businesses and medium-sized or large businesses.

57. We propose that the Commissioner should be able to get involved at an early stage, when the prospect of retaining the two businesses' relationship with each other is greatest. So it could deal with a controversial term for a future contract, say a payment term at contract negotiation stage, or with disputes about arrangements within a contract that has already been agreed.

58. We propose the Commissioner should offer three main services:

- a) provide general advice and information, related to supply relationships and focus on dispute resolution and contract principles
- b) signposting to appropriate services e.g. sector ombudsman or regulator, existing independent advice service, approved alternative dispute resolution (ADR) provider or SBC complaints handling function
- c) consider complaints by small business suppliers about payment matters arising with larger businesses which they supply.

59. We propose that the Commissioner should be allowed to refuse to offer support in cases which are vexatious or unsuitable (for example, if there is little prospect of reaching a resolution or another type of provision would be more suitable to resolve the dispute). The SBC will not consider a complaint about an act or omission which occurred before the SBC was established, nor about an act or omission which is allowed by a contractual term agreed before the SBC was established. This would enable the SBC to consider a complaint about a post-commencement act or omission which related to a contract made before commencement e.g. breach of existing contractual clauses such as a payment term.

60. We propose that the Commissioner should also publish an annual report and have the power to make recommendations to the Secretary of State for Business, Innovation and Skills.

61. The SBC would be accessible to 5.2 million smaller businesses in the UK (see Annex A).

Analysis of preferred option

Estimating demand for the Small Business Commissioner

62. In order to undertake cost-benefit analysis of the preferred option, it is necessary to model the demand for the services that the Small Business Commissioner would provide. This is split into the demand for advice, which will be delivered through the website, and demand for complaints which will be handled by staff, albeit a web portal will help filter complaints that are not in scope. Although we have survey estimates, we have no a priori knowledge or information as to the extent to which business responses to our surveys will accurately translate into demand.

Demand for general advice function

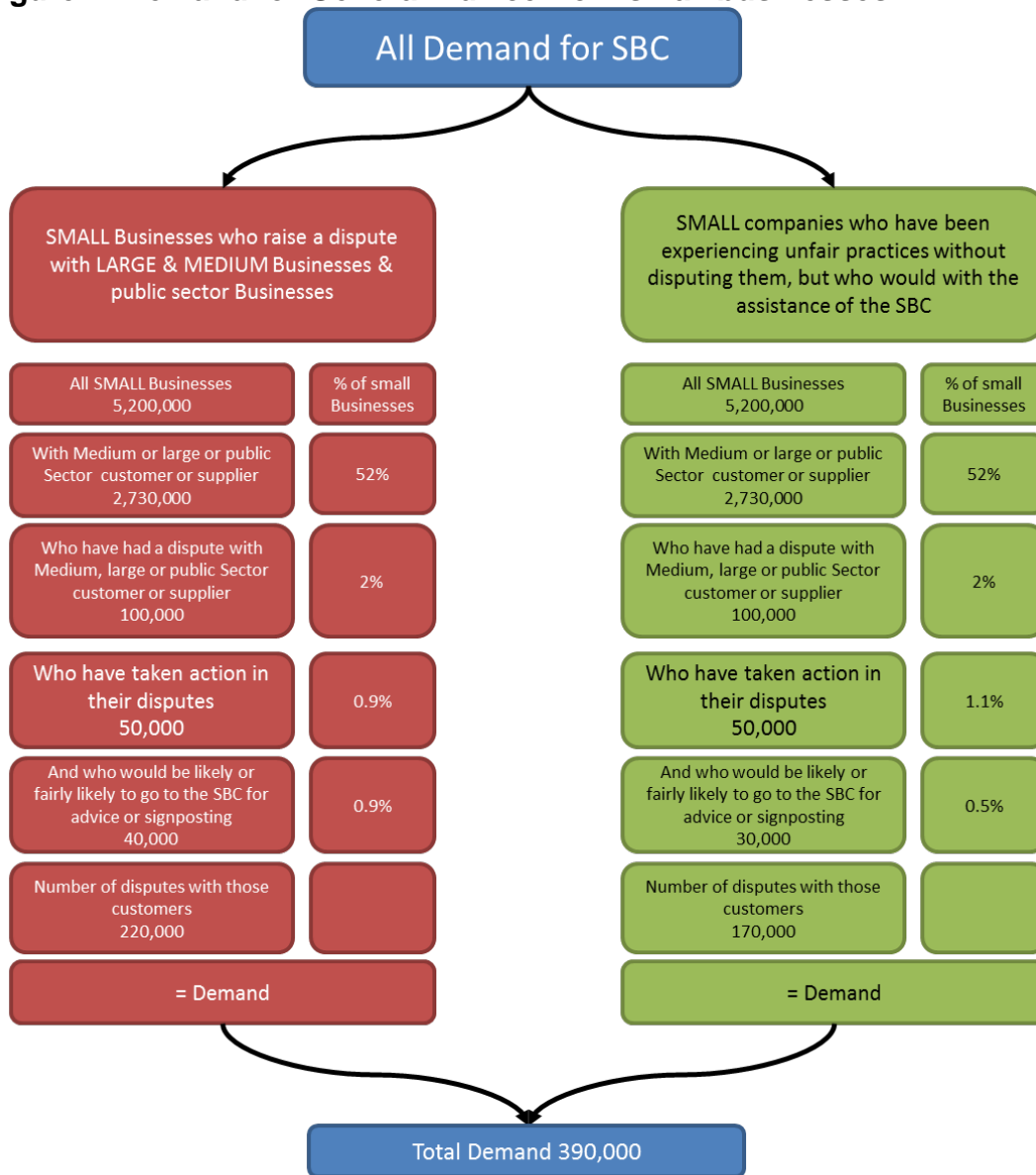
63. There are two forms of demand for the Small Business Commissioner:

- Smaller businesses who raise a dispute with large and medium businesses and public sector
- Smaller businesses who have been experiencing unfair practices without taking action, but who would with the assistance of the Small Business Commissioner

64. The estimated demand for advice has been based on the BMG survey findings applied to business population estimates, shown in figure 1. It assumes that this survey is representative of the business population, and that demand will come from those businesses who had disputes and would ask for advice on them.

65. This suggests there is a total estimated demand for advice and signposting in 390,000 disputes annually from 70,000 small businesses. This corresponds to the number of expected hits on the website. We believe this to be a robust estimate based on the evidence available, without disproportionately complex and costly modelling and investigation.

Figure 1: Demand for General Advice from small businesses



Complaints handling



* Sectors covered by a separate regulator are Utilities, Telecoms, Financial Services, Construction and the Public Sector
Numbers rounded to nearest

Demand for complaints

66. The BMG research covered around 800 small businesses, so that each one represents ~6,500 businesses in the 5.2 million small business population. This means that the smallest group of businesses that the survey can identify will be approximately 6,500 strong.

67. In the survey there were only 2 responses from in-scope businesses (i.e. small businesses in sectors not covered by another ombudsman) who had disputes and would use

mediation or make a complaint to the SBC. Due to the weightings given to businesses with different sizes this corresponded to fewer than 6,000 business

68. Therefore, due to the small underlying sample size of businesses, we are unable to infer an accurate estimate as it is not possible to calculate any measure of confidence around the estimated figure of demand for complaints. Furthermore it should be noted that to obtain a suitably accurate number for the number of complaints the survey would have had to cover approximately 100,000 businesses, which could not be done at proportionate cost.
69. To estimate demand for complaints we have drawn information from the Mystery Shopper function of the Crown Commercial Service. This service handles supplier complaints about procurement practice across the public sector, primarily for small and medium businesses estimates that in 2015 it will receive 250 complaints handled by 6 staff.
70. We have compared the number of disputes in our survey that could have been taken to the Mystery Shopper with the number of disputes that could have been taken to the Small Business Commissioner. We have assumed that businesses are as likely to complain about a dispute with a large company to the Small Business Commissioner as they are to complain about a public body to the Mystery Shopper. We then use the ratio of the disputes in the survey to scale up the number of complaints made to the Mystery Shopper to estimate the number of complaints made to the Small Business Commissioner.
71. In the survey there were 37 disputes that could have been taken to the Mystery Shopper (these were those between the small or medium businesses and the public sector, weighted according to company size) and 48 disputes that could have been taken to the Small Business Commissioner (these were those between the small businesses and medium or large businesses, weighted according to company size, but excluding those who reported themselves to be in the sectors “construction”, “financial services/real-estate” and “information/communication” as those complaints would be signposted to the relevant ombudsman). This scales up the Mystery Shopper Complaints by 28% to 320 a year.
72. As it is lower than 6,500 this approach is consistent with the survey results directly asking about complaints to the Small Business Commissioner.
73. The main assumptions here are:
- That small businesses will be as likely to make a complaint about a large business as they are about a public sector body.
 - That the SBC will be as well-known and as available as the mystery shopper function.
 - That the BMG survey is representative of the business population, and business’s behaviour.

Costs

Costs to Business

74. The Government is not proposing at this stage to change the law to make particular practices unlawful. This is a proportionate approach, intended to encourage a culture change that balances the issues identified with the importance of businesses’ freedom of contract. If future experience – including from the Commissioner’s annual reports – shows that problems persist, the Government will be able to review whether changes to underlying law are then needed.
75. Therefore, there is no direct cost to business of this option. There is no requirement to use the Small Business Commissioner when a dispute arises. A smaller business will make its own commercial decision about whether to use the Small Business Commissioner and we expect it to only do this when it perceives the benefits will outweigh any costs.

76. Larger companies about which small business approaches the Commissioner do not have to engage with the Small Business Commissioner or take part in the alternative dispute resolution a small firm may request. Therefore there will be no costs of compliance to larger businesses
77. If a complaint is made to the Commissioner about a business, it will be asked to provide information relating to the complaint. The SBC will not have power to require the larger party to provide information or documents.
78. If a finding is made against a business, the Commissioner may make recommendations – such as restarting negotiations with the business that made the complaint or to restore them to previously agreed terms. The recommendations are not legally enforceable but the Commissioner may report in its decisions and will report on its activities and in doing so might highlight particularly poor practice by businesses in responding to its recommendations.
79. The Small Business Commissioner will have the power to name larger companies however they will not be legally forced to change their behaviour as it will be about unfair practices rather than unlawful practices. If the large company does change its behaviour and incur costs this is its own commercial decision and we expect it to only do this when it perceives the benefits will outweigh any costs.
80. As there is no legal obligation to use the Small Business Commissioner for any businesses there are no familiarisation costs incurred by businesses.

Costs to Government

81. The costs Government is likely to face can be split into transition costs and recurring costs. Transition costs are one-off costs which relate to the implementation of the measure, whereas the recurring costs are those that are likely to recur for the time that the policy measure is in force.
82. The transition costs for this policy option will be the costs related to setting up the Small Business Commissioner. The recurring costs will be the costs related to running the Small Business Commissioner.
83. The costs of the Small Business Commissioner are based on it having:
- A Commissioner (and scope for a deputy), to be paid at a similar level to the Pubs Code Adjudicator and the Groceries Code Adjudicator. They will make final decisions and report to the Secretary of State.
 - Staff to provide office support to the Commissioner and manage the advice information and complaints functions.
 - An interactive website, which will be the primary way businesses interact with the Small Business Commissioner, and which will provide signposting to other services, such as the ombudsmen in other sectors and to private sector mediators. We expect demand for information to come from 390,000 disputes that small businesses have with large businesses.
 - Staff to handle complaints considered by the Small Business Commissioner.

The impact of demand levels on costs.

84. General advice, signposting and the triage of complaints will be handled by the interactive website. The cost of this service does not depend on the level of demand; the cost of a web service is incurred in the design and hosting, and does not depend directly on the level of hits. Therefore the cost of providing advice is relatively certain.
85. BIS staff will assist the Commissioner in processing complaints. The primary uncertainty in this costing is the level of demand for complaints, as this will determine the number of staff

needed to process them. Analysis of the survey results and comparison with the Crown Commercial Services Mystery Shopper suggests that 320 complaints will be made a year. To take account of the fact that costs can often be underestimated we have further inflated this by an *optimism bias of 50% for our best estimate* to give 480 complaints, and an optimism bias of 100% for our high estimate to give 640 complaints.

86. The Mystery Shopper handles 250 complaints a year with 6 staff. This number is scaled up and rounded to the nearest FTE to match the low, high and best estimates of the demand for complaints. This is shown in Table 2.

Table 2: Complaints for low, best and high estimates of demand, with the staff needed to handle them.

| Title / Grade | <i>BEST estimate Number / FTE</i> | High estimate Number / FTE |
|--------------------------|---------------------------------------|-------------------------------|
| Basis | +50% | +100% |
| Complaints | 480 | 660 |
| Senior Executive Officer | 8 | 10 |
| Higher Executive Officer | 0 | 0 |
| Executive Officer | 4 | 5 |
| Total | 12 | 15 |

SBC Transition costs

87. Table 4 sets out the estimated setup costs of the SBC which been estimated to be £1,115,000 to the nearest £1,000. It is broken down into the following costs:

88. The recruitment of the Commissioner. This is assumed to be 20% of the annual salary costs as the Commissioner will be a high profile individual recruited from outside the civil service. This is at a similar rate to that for the Pub's Code Adjudicator⁷.

89. The recruitment of support staff. This is assumed to be 10% of the annual salary costs, and is very similar to that for the Pub's Code Adjudicator staff.

90. Staff IT setup. This is £1,065 per person for the provision of laptops and IT set up, based on existing BIS costs.

91. Website setup. This has been budgeted at £1,000,000. This is broken down into £200k for Website & Design providing information and advice, £400k for basic case triage and referral portal (external mediation) and £400k for complex case triage and referral portal (internal complaints service). This has been inflated by 50% optimism bias for the high cost estimate.

Table 3: Setup costs of the SBC.

| | <i>BEST estimate</i> | High estimate |
|--------------------|----------------------|-------------------------|
| Complaints | 480 | 660 |
| Commissioner | £22,000 | <i>As best estimate</i> |
| BIS Staff on-costs | £75,000 | £86,000 |
| Staff IT Support | £19,000 | £22,000 |
| Website | £1,000,000 | £1,500,000 |
| Total | £1,115,000 | £1,629,000 |

Rounded to nearest £1,000. May not sum due to rounding

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408449/bis-15-64-pubs-statutory-code-and-adjudicator-final-stage-impact-assessment.pdf

Operating costs of the Small business Commissioner

92. Table 4 sets out the estimated annual costs of the SBC, which are estimated as £1,315,000 to the nearest £1,000. The SBC will not pay for the costs of mediation between companies.

Table 4. Annual costs of the SBC:

| | <i>BEST estimate</i> | <i>High estimate</i> |
|--------------------|----------------------|-------------------------|
| Complaints | 480 | 660 |
| Commissioner | £130,000 | <i>As best estimate</i> |
| BIS Staff on-costs | £878,000 | £1,007,000 |
| Staff IT Support | £19,000 | £23,000 |
| Premises | £88,000 | £102,000 |
| Website | £200,000 | £300,000 |
| Total | £1,315,000 | £1,562,000 |

Rounded to nearest £1,000. May not sum due to rounding

93. The salary and on-costs of the Commissioner. Currently this is budgeted at £129,585 including on-costs of pension and employers' NICs. This is at SCS Pay scale 3.2 with a salary of £110,191⁸.

94. The salary and on-costs of the support staff. This has been budgeted at average BIS on-costs. The Secretariat has three functions:

- a. The Commissioner's office.
- b. To provide the Commissioner with Legal Advice.
- c. To process complaints. The Mystery Shopper handles 250 complaints a year with 6 staff. This number is scaled up and rounded to the nearest FTE to match the low, high and best estimates of the demand for complaints.

95. Staff IT annual cost. £1,099.92 per annum per FTE based on BIS average.

96. Premises annual cost. £4,944 per annum per FTE based on BIS average.

97. Website Annual costs. This has been budgeted at £200,000 per annum. This has been inflated by 50% optimism bias for the high cost estimate.

Proposed Funding Model

98. The Commissioner will be publicly funded.

99. The Commissioner will neither cover nor subsidise the cost of mediation. We believe the cost of mediation to business is reasonable.

100. Administratively, Government can deliver efficiency by merging the back office functions of the Commissioner with the existing Groceries Code Adjudicator, and Pubs Code Adjudicator.

Benefits

101. It will act as a strong disincentive to unfavourable payment practices, work with larger businesses to help them improve their practices, and build the confidence and capabilities of small businesses to assert themselves in contractual disputes.

⁸ http://www.dfpni.gov.uk/scs_pay_scales_1_august_2014.pdf

102. The Commissioner will enable small firms to access information and advice to help them become 'smarter contractors'. The intention is that they will be able to negotiate more effectively with other businesses, avoiding many of the issues that arise now.
103. Advice and information on alternative dispute resolution and signposting to directories of providers could raise the awareness of small businesses. Research by the Legal Services Board shows that those businesses that access independent advice are more likely to use mediation or conciliation to resolve a problem⁴. If take up of alternative dispute resolution were to increase there is evidence of the benefits that this can create.
104. The experience of the Victoria Small Business Commissioner in Australia for example suggests that businesses will save both time and money by pursuing alternative dispute resolution. Over half the Victoria cases were successfully resolved, at 30% (or less) of the cost of litigation. In terms of time commitment, over half the complaints were resolved within one week, and 80% within 12 weeks (note that this body provides mediation in house and subsidises outside mediation).
105. The Centre for Effective Dispute Resolution (CEDR) claims that mediation provides businesses with significantly reduced timescales for settling disputes: 75% of cases undertaking mediation are settled on the first day, and a further 11% within 12 weeks (i.e. 86% compared to the Victoria Small Business Commissioner's total of 80%). CEDR also suggests significant financial benefits, with an estimated saving of £2.4 billion a year from avoiding wasted management time, damaged relationships, lost productivity and legal fees from disputes⁹.
106. The information and general advice service therefore should increase awareness and take up of mediation services.
107. By increasing the use of mediation and preserving more commercial relationships, we expect the Small Business Commissioner to deliver significant benefits for the UK's small firms. In addition to case-by-case dispute resolution, the services provided by the Commissioner are intended to deliver a broader culture change across the UK business landscape, improving the overall quality of business relationships.
108. By being able to look into complaints the Commissioner will fill gaps in other services for business to business complaint handling and help small businesses resolve disputes that they may otherwise have allowed to continue or written off.
- Disputes resolved faster
 - Cheaper than going to court
 - SMEs feeling empowered
 - Culture change
109. The Commissioner will give direction to other government service provision to tackle the issues within scope. A statutory requirement to monitor the prompt payment reporting requirement data, and naming businesses with unfavourable payment practices, will provide a holistic approach to managing problems within the business-to-business environment.
110. We asked small businesses about the time and cost of resolving payment disputes in the citizen space survey, but there were limited responses to these questions. Unfortunately in the absence of robust evidence about the cost of disputes to small businesses, and difficulties in defining what a dispute would be, it has not been possible to quantify the predicted benefits to business before implementation.

⁹ Centre for Effective Dispute Resolution, The Sixth Mediation Audit: A survey of commercial mediator attitudes and experience, 22 May 2014

Risks

111. There is a risk that demand for the service is not judged accurately, and it is either under or over-subscribed, particularly the demand for complaints, which need staff time to process them. If the demand has been overestimated and there are surplus processing staff it will be possible to redeploy their resource within the civil service. If it is an underestimate, and a larger number of complaints are made than can be processed there may be a risk of increased expenditure, of delays in processing complaints or of having to narrow the scope of complaints accepted.
112. This risk is largely being managed through limiting the scope of the SBC so that the only complaints it can examine are:
- a. about payment practices.
 - b. in sectors where there is not an existing mechanism (e.g. an ombudsman) to resolve such disputes.
 - c. not the subject of ongoing court proceedings.
 - d. where the small business has raised the issue with the larger business before coming to the SBC (apart from exceptional circumstances).
 - e. Made within a specified time period of the problem arising.
 - f. about attempts to prevent a small business complaining to the SBC.
113. In addition the Secretary of State has a power to make regulations to further reduce the complaints in scope but does not have a similar power to expand the scope.
114. In addition Government will also consider whether an 'agile' approach to implementation would be helpful in early stages e.g. through variation in commencement of provisions.

Direct costs and benefits to business calculations including Business Impact Target considerations

115. All the costs of the preferred option will met by Government. Therefore this will be a Zero Net cost measure.

Wider impacts

Public Sector Equalities duty

116. The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we consider the likely positive and negative impacts that policy proposals may have on people with 'protected characteristics' and to estimate whether such impacts disproportionately affect such groups. The protected characteristics considered are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership.
117. The policy is focused on helping small businesses. The small business population represents well over 90% of all businesses in the UK and as you would expect available statistical evidence suggests that people from all communities with protected characteristics are a significant presence in terms of the small business population.
118. The policy has been reviewed to consider whether it could:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - advance equality of opportunity between people who share a protected characteristic and those who do not

- foster good relations between people who share a protected characteristic and those who do not

Positive and negative impacts

119. The main aim of this policy is to support small businesses so they are better able to resolve contractual disputes with larger businesses, particularly disputes with regard to payment practices. We were unable to find evidence that people with protected characteristics running small businesses are treated, or at risk of being treated, any more unfairly than small businesses without protected characteristics.
120. However if the Small Business Commissioner is able to achieve its aims then this may promote equality of opportunity between some people who share a protected characteristic and those who do not, specifically for some minority ethnic communities.
121. This is because there is some evidence to suggest that, although the disparities are not due to an applicant's ethnicity, loan application success rates are lower in some minority ethnic SMEs when compared with Indian and White businesses, notably Black African, Black Caribbean, Bangladeshi and Pakistani groups. Therefore it is feasible that were the SBC to assist these businesses in resolving payment disputes this could improve their cash flow and could alleviate any difficulties caused by a relative lack of access to loan finance.
122. It would therefore be beneficial to ensure that in any communications activity the SBC has regard to channels that would raise awareness of the SBC in these communities.

Accessibility

123. The means of delivery of the proposed functions particularly the functions in relation to the provision of general advice and information have relevance for protected characteristics. The preferred channel for the provision of general advice and information will be via a website. People with a visual or hearing impairment may experience difficulties in accessing information provided in a written or spoken format respectively.
124. Accessibility issues related to the website will be addressed by integrating the information and advice with the Gov.UK service. Gov.UK is Web Content Accessibility Guidelines (WCAG AA) compliant. The Government Digital Service has also undertaken user testing with different groups with protected characteristics and has received positive feedback. This blog gives further information <https://gds.blog.gov.uk/2012/01/20/user-testing-accessibility/>.

Family Test

Possible negative impacts

125. The Small Business Commissioner (SBC) policy has been reviewed against the Family Test Questions that appear in Government guidance¹⁰.
126. It is possible that a commercial dispute may have a negative impact on the family or family members running a small business that is a party to the dispute. For example it might add to factors that are putting a couple relationship under strain and/or it may take up so much time of a small business owner that it makes it harder for her/him to engage with family life.
127. However the function of the SBC itself will not have a negative impact on small businesses and the family members that are affected by them. This is because the policy does not place obligations on small businesses rather it is a service that they choose

¹⁰ <https://www.gov.uk/government/publications/family-test-assessing-the-impact-of-policies-on-families>

whether or not to engage with. It is the dispute or complaint itself that is the crucial factor that might impact on the health of the family.

128. There is evidence from the BMG survey that suggests that the existence of the SBC will encourage more people running small businesses to seek to raise disputes with a commercial partner and therefore risk the negative impacts of the dispute. However it still remains the decision of the small business as to whether to pursue the dispute and engage with the SBC and it is not the existence of the SBC itself which creates in the mind of the small business the sense that they are in dispute with a commercial partner.

129. It will be important nevertheless that the scope and functions of the SBC are communicated clearly to small businesses to inform the decision making related to dispute resolution.

Possible positive effects

130. Where a small business is involved in a dispute that is so serious that it affects the future of the business then the SBC may potentially have a positive impact on the families involved if it assists in the resolution of the dispute. There is no evidence however that any particular operational approach is required to ensure that small business owners that are in a family are able to access a service such as that of the SBC.

131. As mentioned above, prior and subsequent to the setting up of the SBC a clear communication strategy will be developed so attempts are made to ensure that all potential users are clear about its role. Furthermore as set out in the Equality Analysis where there are accessibility issues in relation to protected characteristics under equalities legislation this will be addressed through the design of the web portal which is to be integrated within Gov.Uk

Small and micro business assessment

132. The Small Business Commissioner is accessible to small and micro businesses as defined by the Small Business, Enterprise and Employment Act.

133. A smaller business will make its own commercial decision about whether to use the Small Business Commissioner and we expect it to only do this when it perceives the benefits will outweigh any costs.

Competition assessment

134. This competition assessment focuses on the impact of the proposed policy on competition. To assess the impact there are four questions with reference to guidance on competition assessments provided by the former OFT.¹¹ Would the proposal -

- a) Directly limit the number or range of suppliers?
- b) Indirectly limit the number or range of suppliers?
- c) Limit the ability of suppliers to compete?
- d) Reduce suppliers' incentives to compete vigorously?

- a. The proposed option would not directly or indirectly limit the number or range of suppliers.
- b. It is theoretically possible the proposed option may have an indirect effect on the ability of mediators to compete against each other, but this effect is expected to be negligible in practice. The impact would come if those mediators who are accessed via a directory that is signposted to by the SBC web portal obtain more

¹¹ http://www.of.gov.uk/shared_of/reports/comp_policy/oft876.pdf

business at the expense of any potential mediators which are not accessed via the portal. However, as the intention is for the SBC to signpost to lists maintained by relevant professional bodies, any affect that can be attributed to the SBC will be negligible.

- c. It is not expected to have any effect on competition in other markets.
- d. It is not expected to have any effect on suppliers' incentives to compete vigorously.

Annex A: Business in scope

The Small Business Commissioner will define a Small Business as one with fewer than 50 staff. for the purpose of this Impact Assessment we will assume there are 5.2m smaller businesses in scope although we acknowledge this may be a slight overestimate.

- The Secretary of State may by secondary legislation, apply balance sheet and turnover thresholds in due course.
- It is proposed that the financial thresholds will be based on the EU definition thresholds. The thresholds used are:

| Firm category | Employees | Turnover | or | Balance sheet total |
|---------------|-----------|----------|----|---------------------|
| Small | < 50 | ≤ € 10 m | | ≤ € 10 m |

At the start of 2014, there were an estimated 5.2 million UK private sector businesses.

Almost all of the business population (99.3%) were small (0 to 49 employees)¹². Although some may be excluded due to not meeting the financial thresholds as themselves or as part of a corporate group, it is unlikely to materially affect the 5.2m estimate because of the vast number of very small businesses.

It is estimated that fewer than 35,000 private sector businesses (regardless of number of employees) have a turnover of £10m or more¹³. Just over 5,000 businesses with less than 50 employees are estimated to have a turnover of over €5m¹⁴. Therefore any adjustments to the 5.2m figure will be immaterial due to the rounding. Data on balance sheet total of small businesses if available will be disproportionate to try and gather.

¹²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/377934/bpe_2014_statistical_release.pdf

¹³<https://www.gov.uk/government/statistics/msb-demographics>

¹⁴<https://www.gov.uk/government/publications/uk-private-sector-enterprises-numbers-of-employees-and-turnover>