



Department for
Business, Energy
& Industrial Strategy

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Government Consultation

Closing date: 24 December 2020

October 2020



OGL

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Any enquiries regarding this publication should be sent to us at: responsiblepaymentculture@beis.gov.uk

Foreword

Paul Scully, Minister for Small Business, Consumers and Labour Markets; Minister for London

Small businesses are crucial to the UK economy. Chasing late payments remains a significant burden on small businesses and creates real cashflow problems for businesses who are least equipped to manage them.



Late payment remains a significant issue in the UK, with £23.4 billion owed to small and medium-sized businesses (“SMEs”)¹. This Government is determined to see this reduce to ensure that SMEs are given the best chance of succeeding and contributing to the UK economy. This is ever more important now, as the economy continues to recover from the consequences of the Covid-19 pandemic.

To further drive culture change, UK business needs to embed in their DNA that late payment and unfair payment practices are not acceptable.

In June 2019, the Government published its response to the 2018 ‘Creating a Responsible Payment Culture’ Call for Evidence; assessing what further steps and intervention might be needed to improve payment practices. Within that, Government announced that would bringing forward a broad package of measures that would increase Board level responsibility, unlock the benefits of technology for more SMEs, set clear standards of good practice and to consult on the merits of extending the powers of the Small Business Commissioner (“the Commissioner”).

We also committed in our 2019 manifesto to clamp down on late payment and strengthen the powers of the Commissioner to support small businesses who are least able to cover financial shortfalls and find temporary finance more difficult and more expensive to obtain.

Since launching in December 2017, the Commissioner has recovered £7.5 million owed to small businesses, as well as naming eight large businesses who had paid their small business suppliers late following the Commissioner’s investigation of a complaint.

Up until now, it has been right to allow the Office of the Small Business Commissioner time to establish itself and exercise the powers afforded under existing Legislation. Both Government and the Commissioner believe the time has come to assess and re-evaluate the Commissioner’s enforcement powers in order to go even further to drive culture change in business-to-business payment practices.

I am pleased to open this consultation which seeks views on the merits of extending the scope of the Commissioner’s remit to include the ability to consider complaints from small businesses about other small businesses, and strengthening the Commissioner’s powers to assist small businesses, and provide them with effective mechanisms for redress in respect of late payments. This consultation also seeks views on the merit of powers to compel the disclosure

¹Pay UK data: <https://www.wearepay.uk/uk-smes-face-debt-burden-of-23-4-billion/>

of information, which would ensure that businesses co-operate with the Commissioner, as well as powers to activate enforcement mechanisms.

Our aim is to encourage small businesses to come forward and complain, knowing that their concerns will be dealt with by the Commissioner's Office, and that they have the necessary powers to provide remedies to those who have been treated unfairly.

This consultation will close on 24 December 2020 and I encourage businesses of all sizes to respond.

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General information

Why we are consulting?

Responses to the Government's 'Creating a Responsible Payment Culture' Call for Evidence indicated support for the Commissioner's existing power to name businesses for poor payment practices following investigation of a complaint. However, respondents also called for the Commissioner's powers to be extended – although there was no consensus as to which specific powers he or she should be afforded.

The Commissioner's existing power to make non-binding recommendations is seen by many as insufficiently strong and does not provide confidence for small businesses that action will be taken on complaints raised. The Commissioner is also currently limited to investigating complaints from small businesses about larger businesses, although it has received several complaints from small business about other small businesses, which they have been unable to investigate under the current framework.

The Government believes it is now sensible to assess and re-evaluate the Commissioner's scope and powers to go even further to drive culture change in business-to-business payment practices.

Consultation details

Issued: 1 October 2020

Respond by: 24 December 2020

Enquiries to: responsiblepaymentculture@beis.gov.uk

Consultation reference: The Provision of Investigatory and Enforcement Powers for the Small Business Commissioner

Audiences:

The Government would like to hear views from anyone who is affected by or interested in these proposals including individuals, businesses (micro, self-employed, sole traders, small, medium and large) and business representative bodies.

Territorial extent:

UK Wide

How to respond

Responses should be provided in electronic format only either through the Citizen Space link or to the email address below. **Due to the current Covid-19 pandemic and subsequent skeleton staff in BEIS estates at present, we are not accepting postal responses to this consultation.**

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Respond online at: <https://beisgovuk.citizenspace.com/business-growth/sbc-powers-consultation/>

or

Email to: responsiblepaymentculture@beis.gov.uk

A response form is available on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/increasing-the-scope-and-powers-of-the-small-business-commissioner>

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the Government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Executive summary

Tackling the continuing issue of late payments is vital to ensure that businesses of all sizes can compete and thrive, thereby enabling a more productive and ambitious business environment with small businesses able to access opportunities to grow. Businesses with good credit and cashflow management build a positive relationship with their creditors and free up cash to invest in growth and innovation. This is ever more important while the economy continues to recover from the consequences of Covid-19 pandemic.

There is no single or simple fix to reducing late payments, but in recent years the Government has taken positive steps to tackle the problem head-on. Launching the Commissioner to deal with small businesses' late payment disputes was one of the most important steps. In addition to this, the Government has been collecting and analysing information on large businesses payment behaviour through the Payment Practices Reporting Duty.

The Government has also acted to tackle late payment by introducing a new, tough and transparent compliance regime to underpin the Prompt Payment Code. Last year, the Commissioner joined the Code's Compliance Board to help assure its independence from industry. The Board has begun to report on all cases of signatories being removed from the Code by issuing press notices setting out who is being suspended, or removed, and why.

The level of late payment debt owed to SMEs remains far too high with some small firms still having no choice but to trade on unfavourable terms where, for example, the time in which a large business is required to pay the relevant SME is too long. This has only been exacerbated during the Covid-19 pandemic. Such unfavourable terms are imposed on SMEs by larger customers who often hold the balance of power in the contractual relationship. We also know that sometimes small businesses themselves do not pay other small businesses on time. The Commissioner's Office receives a few such complaints each month but cannot deal with them under the Commissioner's current remit.

Call for Evidence on Creating a Responsible Payment Culture

The 2018 Call for Evidence sought views on how to improve the payment landscape for small business. We asked questions on three themes: 'existing payment practices and experiences'; 'existing measures to improve payment practices', and; 'new measures to improve payment practices'. We received 283 responses from businesses of all sizes, business representative organisations and individuals.

Following detailed analysis of the responses, Government announced in June 2019 that:

- We would consult on the merits of strengthening the Commissioner's 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;
- We would transfer the administration of the Prompt Payment Code to the Commissioner from the Chartered Institute of Credit Management, unifying prompt payment measures with the Commissioner and addressing weaknesses within the current Code's operation, which we completed in March 2020.

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- We would also strengthen and reform the Code once we have engaged with existing Code signatories on any reforms, which has commenced this autumn;
- We would take a tough compliance approach to large companies who do not comply with the Payment Practices Reporting Duty, and we would use our enforcement powers to prosecute those who do not comply, where necessary;
- In October 2019 we launched a Business Basics Fund competition for £2 million, with up to £1 million to encourage SMEs to utilise payment technology and boost productivity by reducing the time taken to chase payments. Of the six winning businesses selected to receive funding, four are either partially or solely related to technology to speed up payments;
- We would continue 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;
- We would bring greater transparency to how Supply Chain Finance is reported in company accounts and assessed in audits, by working with the Financial Reporting Council to develop guidance and build it into their sampling of companies' accounts. In November 2019, the Financial Reporting Council issued an Open letter to company report preparers recommending payment practices are reported in annual reports.

What we are consulting on

This consultation seeks views on the merits of strengthening the Commissioner's ability to assist small businesses by providing them with effective mechanisms for redress, in respect of late payments. The Commissioner would potentially gain powers to activate enforcement mechanisms against:

- Businesses who do not comply with information requests. We are seeking 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;
- Businesses who are found to have poor or unfair payment practices towards small businesses. This consultation explores whether sanctions should be imposed by the Commissioner under certain specific circumstances. These sanctions could include undertaking of binding payment plans and financial penalties where payment fails to take place.

We are also seeking views on extending the Commissioner's scope to allow him or her to consider complaints by small businesses about other small businesses. In addition, we are asking if the Commissioner should be given the powers below:

(i) the power to investigate specific instances of suspected poor or unfair payment practices at his or her own initiative or following receipt of a complaint from a third party;

(ii) the power to carry out a review and write a report on the effect of relevant legislation, policies and practices on small businesses, following an instruction by the Secretary of State. The review need not be limited to payment matters and may consider other issues which affect small businesses.

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The issue of extending the scope of the Commissioner's remit (to consider complaints from small businesses about other small businesses) is separate to the issue of whether the Commissioner should be given additional powers. After analysing responses, the decision of whether to extend the scope will be independent of the decision to extend any powers.

The scope extension and each of the powers we are seeking views on, if implemented, would be achieved through Primary legislation.

Construction sector

Some respondents to the 2018 Call for Evidence asked that Government consider extending the scope of the Commissioner's activity to cover disputes in the construction sector. Section 4(5) of the Enterprise Act 2016 provides that where a complainant has a statutory right to refer the complaint for adjudication by a person other than a court or tribunal, that complaint is excluded from the Commissioner's complaints scheme.

A person who is party to a construction contract has a statutory right to refer a dispute arising from that contract for adjudication. Such disputes would therefore be excluded from the Commissioner's complaints scheme. Government believes that this is the correct approach, considering the complexity of construction contract disputes, and does not intend to extend the scope of the Commissioner's activity to the construction sector.

Small Business Commissioner

In 2015 the Government made a commitment to establish a new service to tackle late payment and make payment culture in the UK fairer. The Commissioner was therefore established under the provisions of the Enterprise Act 2016 (“the Act”) to tackle late payment and unfavourable payment practices in the private sector.

Launched in December 2017, the Commissioner leads an operationally independent office which provides support to small businesses especially in relation to the issue of payment disputes with their larger business customers, including what action to take if a payment is overdue. The Commissioner also provides general advice and information to small businesses in connection with their supply relationships with larger businesses, including signposting small businesses to existing support and dispute resolution services. Information and advice are primarily delivered through the Commissioner’s website, which any business can access.

The Commissioner also considers and investigates complaints from small businesses (those with fewer than 50 employees) relating to payment matters in connection with the supply of goods and services to larger businesses (those with 50 employees or more). Following investigation and consideration of the complaint, the Commissioner can make non-binding recommendations as to how the parties could resolve their disputes. Under existing legislation, the Commissioner can only investigate poor payment practice when a small business complains directly and when such complaint conforms to the requirements of the Small Business Commissioner (Scope and Scheme) Regulations 2017.

The Commissioner also has the power to publish a report of the inquiry into, and consideration and determination of, a complaint. Upon consideration of the relevant factors, that report may name the larger respondent business. The report may highlight poor payment practices of the larger business and equally may praise good payment practices.

The Commissioner combines an approach to building the confidence and capabilities of small businesses to assert themselves in disputes with larger businesses, whilst preserving important commercial relationships, with proportionate powers to dis-incentivise unfavourable payment practices. This targeted intervention enables the Commissioner to develop trust and build credibility with small and large businesses alike; to achieve real change on the ground. A key focus of the work of the Commissioner is to empower small businesses to resolve payment disputes with larger businesses and avoid future issues by encouraging a culture change in payment practices and how businesses deal with each other. The Commissioner does not have the power to proactively investigate poor payment practice, even when there is evidence or intelligence to suggest this is occurring.

The payment landscape - Government measures addressing business to business late payment and unfavourable payment practices

As part of the UK-wide package of measures introduced under the Small Business, Enterprise and Employment Act 2015, the Reporting on **Payment Practices and Performance Regulations** came into force in April 2017. These regulations require large businesses to publish twice yearly reports on their payment practices. The reports include statistics on how quickly businesses pay suppliers and are made available to the public on the GOV.UK website.

The publication of these reports gives transparency to the payment practices of the UK's largest businesses and gives their suppliers, including small businesses, an indication of what they can expect when doing business with them.

Failure to submit a payment practices report is a summary criminal offence, punishable on conviction by a fine. As part of a new, tougher compliance approach announced in June 2019, BEIS has initiated the criminal enforcement process against a number of companies who may have neglected their statutory duty to report on their payment practices or failed to fulfil that obligation on a continuous basis.

The voluntary **Prompt Payment Code** was created in 2008 in response to a call from businesses for a change in payment culture. This Code was established to set standards in payment terms and plays a role in bringing about a culture change in payment practices. Signatories agree to set an example with their payment practices, undertaking to pay suppliers within a maximum of 60 days and to avoid any practices that adversely affect the supply chain. More than 2500 businesses, Government departments, and public authorities have signed up to the Code.

In October 2018, the Government announced a new tough and transparent compliance regime underpinning the Code, and the Commissioner joined the Code's Compliance Board to support his role in tackling late payment. Signatories who fail to meet the standard are invited to submit a plan to the Commissioner's Office (who administer the Code on behalf of BEIS), setting out clearly how they will improve their payment performance. Those who are suspended from the Code - but submit a satisfactory plan and subsequently demonstrate compliance - can be reinstated as signatories. To date, 61 businesses have been publicly named and suspended from the Code for failing to pay their suppliers on time. 41 businesses have since been reinstated for subsequently being able to demonstrate they have been improvements in their payment practices and to comply with the Code. Nine businesses have withdrawn from the Code at their request and a further nine business have been removed as they are no longer trading.

Evidence from other countries and other comparative studies

International comparator Case Study: The Australian Small Business and Family Enterprise Ombudsman (“the Ombudsman”)

The Ombudsman launched on 11 March 2016 and has two key functions: to assist, and to advocate for, small businesses and family enterprises. The Ombudsman provides access to dispute resolution services for small business owners who may be involved in a disagreement, so solutions can be reached outside of court. There are also several activities the Ombudsman may conduct as a small business advocate, including: conducting inquiries and research; carrying out work with other arms of Government; contributing to other inquiries and; promoting good business practice.

To support these functions the Ombudsman has received, under their federal legislation, the powers to request information in three instances:

- At the request for assistance by a small business or family enterprise;
- At the Ombudsman’s own initiative, and;
- At a Minister’s request for inquiry.

If an individual or business fails to supply requested information, the Ombudsman has an enforcement power to impose a fine (using set penalty units, with each unit representing a fixed monetary value)².

The Commissioner could benefit from powers similar to the Ombudsman as they would enable him to become a more robust force assisting small businesses to tackle the scourge of late payment practices.

When looking to establish the Commissioner, the Government wanted to drive long-lasting cultural change and sought to achieve this by allowing the Commissioner to exercise powers that would achieve targeted and proportionate intervention without causing unnecessary delay in resolving late payment complaints. The Government deemed compelling parties to provide information as potentially heavy-handed and adversarial to achieving its aims. However, following our assessment of the responses to our call for evidence we believe it is right that we look to re-evaluate.

² Divisions 2,3 and 4 of the Act allow for 30 penalty points for the failure to provide requested information which equate monetary penalty.

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Other comparator Case Studies: Information request powers and enforcement mechanisms

We have identified comparator case studies where the provision of similar powers could benefit the Commissioner in investigations; through the provision of powers to compel the disclosure of information to ensure larger businesses co-operate with the Commissioner. The provision of new powers to the Commissioner could also support larger business compliance and best practice in payment culture. The following case studies, which include powers to activate enforcement mechanisms, will help inform a package of proposals to put forward in this consultation.

Agency or Body	Information Request Powers	Enforcement Mechanism
Groceries Code Adjudicator	For the purposes of an investigation, and for purposes of monitoring whether a large retailer has followed a recommendation. This requirement is imposed by giving a written notice.	It is an offence for a person to intentionally fail to comply with the requirement. A retailer guilty of an offence under this schedule is liable on conviction or indictment, to a fine.
<i>Legislative reference: Schedule 2 of the Groceries Code Adjudicator Act 2013</i>		
Financial Services Ombudsman	By notice in writing given to a party to a complaint, require that party — to provide specified information or information of a specified description; or to produce specified documents or documents of a specified description, which the ombudsman considers necessary for the determination of the complaint.	If a person (“the defaulter”) fails to comply with a requirement imposed under section 231, the ombudsman may certify that fact in writing to the court which may enquire into the case and, if satisfied that the defaulter failed without reasonable excuse to comply with the requirement, may deal with the person as if they were in contempt.
<i>Legislative reference: Section 231 and Section 232, Part XVI of the Financial Services and Markets Act 2000</i>		

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Other comparator Case Studies: Investigatory powers and enforcement mechanisms

Agency or Body	Investigatory powers	Enforcement Mechanism
Groceries Code Adjudicator	<p>Following an investigation, the Adjudicator must –</p> <p>(a) publish a report on the outcome of the investigation; and</p> <p>(b) consider whether to use any of the enforcement powers.</p>	<p>If, as a result of an investigation, the Adjudicator is satisfied that a large retailer has broken the Groceries Code one or more of the following enforcement measures can be applied –</p> <p>(a) make recommendations;</p> <p>(b) require information to be published;</p> <p>(c) impose financial penalties.</p>
<i>Legislative reference: Groceries Code Adjudicator Act 2013</i>		
Financial Services Ombudsman	<p>Following an investigation, the Ombudsman can make binding decisions through either a money award or direction.</p>	<p>The Ombudsman service does not have enforcement powers, instead consumers can enforce the Ombudsman’s decision(s) in court.</p>
<i>Legislative reference: Section 229 of the Financial Services and Markets Act 2000</i>		

Moving forward: Tackling the continuing issue of late payments

When the Government initially published a discussion paper on establishing ‘a Small Business Commissioner’ in 2015 the evidence pointed towards small businesses suffering because of an imbalance in bargaining power when dealing with larger businesses; with over half of respondents citing some evidence of unfavourable treatment of small businesses by their larger business counterparts. We therefore targeted the Commissioner’s services at those businesses most in need of support.

However, since its launch, the Commissioner has received 40 complaints involving small business to small business disputes which they have been unable to investigate under their current framework. While a relatively small number, this represents 40 small businesses who are least equipped to resolve disputes for themselves and could have been helped if the Commissioner’s scope were extended. Given this, we believe it is now time to consider if the Commissioner should be given the scope to address this issue.

In December 2018, the Business, Energy and Industrial Strategy Parliamentary Select Committee published a Committee Report following their inquiry into Small Businesses and Productivity, in which they advised that late payment inhibits small business growth and therefore affects overall UK productivity. It was their assessment that the Commissioner does not currently have sufficient powers to focus minds and recommended that the Government legislates to give the Commissioner powers to fine companies who pay late.

Responses to the Government’s 2018 Call for Evidence on Creating a Responsible Payment Culture also indicated support for the Commissioner’s existing power to name businesses. However, respondents also called for the Commissioner’s powers to be extended – although there was no consensus as to specific powers. The Commissioner’s existing power to make non-binding recommendations is seen by many as not strong enough and does not provide confidence in small businesses that action will be taken on complaints raised.

It has been right to allow the Commissioner time to bed in and exercise the powers afforded under existing legislation. Given the Commissioner has been operating since December 2017 and following a call for the Commissioner to be given greater powers, it is sensible to assess and re-evaluate powers.

Proposals for potential reform, to go even further to drive culture change in business to business payment practice, are set out in the next chapter.

The proposals

The following package of proposals are put forward with a view to enhancing the Commissioner's ability to improve payment practices culture and support small businesses. These proposals would be implemented through primary legislation.

Scope

Proposal number	Proposal	Description
1	Extended scope for complaints	<p>Widen the scope of the existing complaints function to allow the Commissioner to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to small businesses (as well as large businesses) and to make recommendations accordingly.</p> <p>The extended scope would also apply to any of the proposals below that are implemented meaning the powers could be applied to payment matters in connection with the supply of goods and services from small business to other small businesses.</p>

Review and Report Function

Proposal number	Proposal	Description
2	New review and report function	Following an instruction by the Secretary of State, the Commissioner would carry out a review and write a report with recommendations on the impact and effect of relevant legislation, policies and practices, on small businesses. The review need not be limited to payment matters and may consider other issues which affect small businesses.

Powers

Proposal number	Proposed Power	Description
3	Expanded complaints function	As well as the pre-existing complaints function, the expansion of those powers so the Commissioner can investigate specific instances of suspected poor or unfair payment practices: (i) at his/her own initiative; or (ii) following receipt of a complaint from a third party.

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4	Expanded Investigatory powers	The power for the Commissioner to compel the disclosure of information in connection with the investigation of a complaint.
5	New Enforcement powers	The power for the Commissioner to issue a binding monetary award or payment plan in connection with a complaint where there are adverse findings in relation to the respondent.
6	New Enforcement powers	A power for the Commissioner to claim investigation costs incurred in connection with a complaint where there are adverse findings in relation to the respondent.

Stage 1 - Initiation of Inquiry or Investigation

Proposal 1: *Widen the scope of the existing complaints function to allow the Commissioner to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to small businesses (as well as larger businesses) and to make recommendations accordingly.*

Question 1: **To what extent do you agree that the Commissioner’s complaints handling function should be extended to allow for small business to small business disputes?**

Proposal 2: *Following an instruction by the Secretary of State, the Commissioner could carry out a review and write a report with recommendations on the impact and effect of relevant legislation, policies and practices, on small businesses (‘the new Review and Report Function’). The review need not be limited to payment matters and may consider other issues which affect small businesses.*

We are considering whether this should be a legislative or non-legislative requirement.

This option could allow the Commissioner to conduct a review of wider business practices, unrelated to payment matters, that are specifically impacting small businesses. Other issues which affect small businesses (in addition to payment matters) are diverse and could include, for example, the effect of relevant legislation, policies and practices in creating barriers to the adoption of payment technology. The Commissioner would provide a report with recommendations to the Secretary of State.

Question 2: **To what extent do you agree that the review and report function in proposal 2 should be made available to the Commissioner?**

Proposal 3: *As well as the pre-existing complaints function, the expansion of those powers so the Commissioner can investigate specific instances of suspected poor or unfair payment practices: (i) at his or her own initiative; or (ii) following receipt of a complaint from a third party (‘the Expanded Complaints Function’).*

Under its current complaints handling function, the Commissioner may investigate, consider and determine complaints made by a small business in respect of payment matters with a large business, to which it supplies or may supply goods or services. Those payment matters may include: invoices being paid late; delayed payment of invoices; and unbalanced contractual terms.

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Under proposal 3, the Commissioner does not need to receive a complaint from a small business but may launch an investigation in respect of payment matters between a businesses: (i) on his or her own initiative; or (ii) following a complaint from a third party.

Question 3: To what extent do you agree that the power in proposal 3 should be made available to the Commissioner?

Stage 2 – Undertaking a Review or Investigation

Proposal 4: *The power for the Commissioner to compel the disclosure of information in connection with the investigation of a complaint.*

This power would ensure businesses co-operate more readily with the Commissioner's inquiries and investigations, providing any relevant information requested by the Commissioner, else the business would risk enforcement of the information notice.

Should the business fail to comply with the Commissioner's information notice, we propose that the Commissioner should have enforcement powers available to him or her.

Those enforcement powers could include: (i) the power for the Commissioner to apply to the Court for an order enforcing the information notice (along with the power for the Court to make such an order); (ii) the power for the Commissioner to issue a civil penalty to the recipient for failing to comply with an information notice being a set sum of money, paid to the Consolidated Fund³; (iii) if the recipient of a civil penalty refuses to pay that penalty, the power for the Commissioner to recover the amount of the penalty as a debt (through court proceedings if necessary).

Question 4: To what extent do you agree that the power in proposal 4 should be made available to the Commissioner?

Question 4.1: To what extent do you agree that the Commissioner should be able to issue an information notice?

Question 4.2: To what extent do you agree that the Commissioner should be able to apply to the Court for an order enforcing an information notice?

Question 4.3: To what extent do you agree that the Commissioner should be able to issue a civil penalty if a notice recipient does not comply with an information notice and to recover the amount of the penalty as a debt (through court proceedings if necessary)?

Stage 3 – Concluding a Review or Investigation

Proposal 5: *The power for the Commissioner to issue a binding monetary award or payment plan in connection with a complaint where there are adverse findings in relation to the respondent.*

³ The Consolidated Fund is the Government's general bank account at the Bank of England.

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It is hoped that this power would compel businesses to adopt appropriate and fair payment practices, otherwise risk facing financial penalties.

If following any complaint, the Commissioner was to find that payment(s) are due to a small business complainant and have been unfairly or unreasonably delayed or withheld by the respondent, the Commissioner would have the power to issue a decision notice, which would require compensation to be paid by the respondent to the complainant. The award would seek to put the complainant into the position it would have been in had it been paid on time and in full.

The award will set the amount(s) of the payment in a specified period, and what amount of statutory interest is payable, if applicable. The right of appeal to the Court would be available. If the Commissioner considers that the respondent cannot pay the award in the time specified, he or she may issue a binding payment plan, setting out reasonable timescales in which specified payments should be made to the complainant.

In the event the respondent fails to pay the monetary award, or fails to pay an instalment under a binding payment plan, the amount of the monetary award or instalment could be recovered as a debt (through court proceedings if necessary) by (i) the complainant themselves; (ii) the Commissioner who would subsequently pass the amount recovered to the complainant; (iii) both the complainant and the Commissioner.

Should the respondent fail to comply with the Commissioner's requirement to make a monetary award to the complainant in a specified time, or to pay an instalment of a binding payment plan, we want to seek views as to whether the Commissioner should have the power to impose an additional financial penalty on the respondent, the proceeds of which would be paid into the Consolidated Fund. Any financial penalty would have to be proportionate to the size of business it was being imposed upon and reasonable in all the circumstances.

In the event the business fails to pay the financial penalty, then the amount of the penalty could be recovered by the Commissioner as a debt (through court proceedings if necessary).

Question 5: To what extent do you agree that the power in proposal 5 should be made available to the Commissioner?

Question 5.1: To what extent do you agree that the Commissioner should have the power to issue a monetary award where there is a finding that payment(s) are due to a small business complainant and have been unfairly or unreasonably delayed or withheld by the respondent?

Question 5.2: To what extent do you agree that if the Commissioner considers that the respondent cannot pay the monetary award in the time specified, he or she may issue a binding payment plan?

Question 5.3: To what extent do you agree that where the respondent fails to pay the monetary award, or fails to pay an instalment of a binding payment plan, the amount of the award or instalment should be recoverable as a debt (through court proceedings if necessary) by (i) the complainant themselves; (ii) the Commissioner, who would subsequently pass the amount recovered to the complainant; (iii) both the complainant and the Commissioner?

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Question 5.4: To what extent do you agree that the Commissioner should have the power to impose a financial penalty when a business does not comply with a monetary award and / or payment plan?

Question 5.5: To what extent do you agree that in circumstances where there is a failure by a business to pay a financial penalty, the amount of the penalty should be recoverable by the Commissioner as a debt (through court proceedings if necessary)?

Proposal 6: *A power for the Commissioner to claim investigation costs incurred in connection with a complaint where there are adverse findings in relation to the respondent.*

This power is beneficial as both a deterrent and enforcement measure. It is hoped that the respondent would comply more readily with an investigation. The Commissioner would only be able to claim investigation costs reasonably incurred by it in respect of those cases where an adverse finding is made against the respondent.

In the event the respondent fails to pay investigation costs, then those costs could be recovered by the Commissioner as a debt (through court proceedings if necessary).

Question 6: To what extent do you agree that the power in proposal 6 should be made available to the Commissioner?

Question 6.1: To what extent do you agree that, where the respondent fails to pay investigation costs incurred by the Commissioner, those costs could be recovered by the Commissioner as a debt (through court proceedings if necessary)?

Consultation questions

Proposal 1: Widen the scope of the existing complaints function to allow the Commissioner to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to small businesses (as well as larger businesses) and to make recommendations accordingly.

The extended scope would also apply to any of the proposals below that are implemented meaning the powers could be applied to payment matters in connection with the supply of goods and services from small business to other small businesses.

Question 1: To what extent do you agree that the Commissioner's complaints handling function should be extended to allow for small business to small business disputes?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Proposal 2: Following an instruction by the Secretary of State, the Commissioner could carry out a review and write a report with recommendations on the impact and effect of relevant legislation, policies and practices, on small businesses ('the new Review and Report Function'). The review need not be limited to payment matters and may consider other issues which affect small businesses.

To what extent do you agree that the review and report function in proposal 2 should be made available to the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Proposal 3: As well as the pre-existing complaints function, the expansion of those powers so the Commissioner can investigate specific instances of suspected poor or unfair payment practices: (i) at his or her own initiative; (ii) following receipt of a complaint from a third party ('the expanded Complaints Function').

Question 3: To what extent do you agree that the power in proposal 3 should be made available to the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Proposal 4: The power for the Commissioner to compel the disclosure of information in connection with the investigation of a complaint.

Question 4: To what extent do you agree that the power in proposal 4 should be made available to the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 4.1: To what extent do you agree that the Commissioner should be able to issue an information notice?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 4.2: To what extent do you agree that the Commissioner should be able to apply to the Court for an order enforcing an information notice?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 4.3: To what extent do you agree that the Commissioner should be able to issue a civil penalty if a notice recipient does not comply with an information notice and to recover the amount of the penalty as a debt (through court proceedings if necessary)?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Proposal 5: The power for the Commissioner to issue a binding monetary award or payment plan in connection with a complaint where there are adverse findings in relation to the respondent, or else risk facing financial penalties.

Question 5: To what extent do you agree that the power in proposal 5 should be made available to the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 5.1: To what extent do you agree that the Commissioner should have the power to issue a monetary award where there is a finding that payment(s) are due to a small business complainant and have been unfairly or unreasonably delayed or withheld by the respondent?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 5.2: To what extent do you agree that if the Commissioner considers that the respondent cannot pay the monetary award in the time specified, he or she may issue a binding payment plan?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 5.3: To what extent do you agree that where the respondent fails to pay the monetary award, or fails to pay an instalment of a binding payment plan, the amount of the award or instalment should be recoverable as a debt (through court proceedings if necessary) by (i) the complainant themselves; (ii) the Commissioner, who would subsequently pass the amount recovered to the complainant; (iii) both the complainant and the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 5.4: To what extent do you agree that the Commissioner should have the power to impose a financial penalty when a business does not comply with a monetary award and / or payment plan?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 5.5: To what extent do you agree that in circumstances where there is a failure by a business to pay a financial penalty, the amount of the penalty should be recoverable by the Commissioner as a debt (through court proceedings if necessary)?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Proposal 6: The power for the Commissioner to claim investigation costs incurred in connection with a complaint where there are adverse findings in relation to the respondent.

Question 6: To what extent do you agree that the power in proposal 6 should be made available to the Commissioner?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

INCREASING THE SCOPE AND POWERS OF THE SMALL BUSINESS COMMISSIONER

Question 6.1: To what extent do you agree that, where the respondent fails to pay investigation costs incurred by the Commissioner, those costs could be recovered by the Commissioner as a debt (through court proceedings if necessary)?

Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know

Please explain your answer

Assessment of Impacts

A Justice Impact Test, an Equalities Impact Test and Public Sector Equality Duty will be undertaken after reviewing the responses to this consultation.

If a decision is taken to make a change in the areas outlined, work shall be undertaken to establish the impacts of any changes, these will include impacts on the Small Business Commissioner's customers and stakeholders, the legal framework and the Exchequer.

Next steps

This consultation will run for **12 weeks**. Once the consultation is closed, a Government response will be published in accordance with Government guidelines.

The Government response document will be placed on GOV.UK.

This consultation is available from: <https://www.gov.uk/government/consultations/increasing-the-scope-and-powers-of-the-small-business-commissioner>

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.