

Government to protect small businesses with action on late payments

- Government proposals to give more powers to the Small Business Commissioner (SBC) to help small firms with late payment
- proposed new powers include ordering businesses to pay in good time and issuing fines if they do not, ordering companies to share information on payment practices and the power to launch investigations
- £23.4 billion worth of late payments currently owed to small businesses in the UK, impacting on cash flow and threatening the survival of small firms during the COVID-19 pandemic

New proposals have been outlined by government to ensure small businesses in the UK are paid on time, Small Business Minister Paul Scully today announced (1 October).

Currently £23.4 billion worth of late invoices are owed to small firms across Britain, impacting on businesses' cash flow and ultimate survival.

Today's proposals, as part of a new consultation launched today, look to give new powers to the Small Business Commissioner including:

- the power to order companies to pay their partners, either as a lump sum or agreed payment plan, when a complaint against them for late payment has been investigated and upheld. Companies which do not do so could face further penalties, including fines. This will give a clear incentive for companies to pay their partners on time
- the power to compel companies to share information during an investigation by the SBC. This will ensure cooperation with SBC investigations and provide more information about company payment practices
- the power to launch investigations into suspected bad payment practice, without the need to have first received a complaint from a small business
- expanding the scope for complaints to the SBC, to allow the Commissioner to investigate complaints about other businesses relating to payment matters in connection with the supply of goods and services
- to review and report on wider business practices outside of payment matters, on instruction of the BEIS Secretary of State. This could be a practices unrelated to payment matters specifically impacting small businesses such as supply problems, or broader issues like barriers to the adoption of payment technology
- the power to claim investigation costs from an investigated company when there are adverse findings against them

The government is seeking to create a culture of prompt payment in UK business. This is essential to enable small businesses to succeed, creating jobs, driving innovation and supporting their community.

Small Business Minister Paul Scully said:

Late payments are a terrible burden for small businesses, not only disrupting their cash flow but posing a threat to their survival in many cases.

We are committed to tackling this problem, supporting small businesses at this critical time for the British economy by helping them to secure payment on time.

I am pleased to open this consultation on expanding the Commissioner's powers and welcome the views of businesses that have been affected by this issue.

Karen Woolven, owner of Karen Woolven flowers in Greenwich, London, said:

There is more than enough to worry about when running a small business without having to spend hours chasing up invoices for services that have already been delivered. I have experienced late payment multiple times in the recent past and it's a huge problem which causes a lot of unnecessary uncertainty and stress.

The Small Business Commissioner really helped us to resolve a dispute over this and it makes a lot of sense to give them more powers to sort these issues out. I'm glad to see some action to help small businesses like mine, especially at a challenging time like this.

David Nichols, UK Chief Claims Officer at Zurich said:

These are testing times for businesses and now more than ever, meeting payment terms on time is imperative for their survival. We fully support the expansion of the commissioner's powers which will not only help raise awareness of the challenges this creates for businesses, it will also serve to find a resolve far quicker.

National Chairman of the Federation of Small Businesses (FSB) Mike Cherry said:

We know that paying small businesses late is debilitating, and the practice has increased during COVID-19. It deprives small firms of cashflow, holds back growth, undermines productivity and forces many to take out external finance. In thousands of cases a year this causes the closure of small businesses. It is therefore more important than ever to wipe out this poor payment scourge. The proposed new powers would give the Small Business Commissioner some teeth to investigate bad practice more easily and punish it more

severely, and it is very welcome to see these plans being put forward for consultation.

According to the Federation of Small Businesses (FSB), around 50,000 small companies close each year due to late payments.

With many UK businesses continuing to struggle with the impact of coronavirus, this is now an especially urgent issue.

The Office of the Small Business Commissioner was established in 2017 by the previous government to address the issue of late payments. Since then, the SBC has claimed £7.5 million owed to small businesses and publicly named 8 companies for poor payment practice.

The consultation opens today and will run until 24 December 2020. Businesses are invited to [share their views here](#).

- Figure for amount estimated to be owed to small businesses comes from Pay UK
- according to the FSB, 62% of small companies in the UK have experienced late payment at some point or other. 10% report a lengthening of payment times as a result of the coronavirus pandemic, and some have seen payments frozen altogether
- the SBC, on behalf of BEIS, also administers the Prompt Payment Code (PPC), a voluntary scheme whereby companies agree to pay their partners within 60 days or else be struck off the Code, pending a mutually agreed action plan to improve payment practices
- the government has recently commenced engagement with Code signatories on plans to strengthen and reform the PPC. As part of this work, we are considering that signatories to the Code commit to pay 95% of invoices from smaller businesses within 30 days.

The consultation is open until 24 December and covers the following:

- extending the scope for complaints to allow the Commissioner to consider complaints from small businesses relating to payment matters in connection with the supply of goods and services to all businesses and make recommendations. If this is taken forward, any of the following powers would apply to complaints from small businesses about businesses of all sizes.
- the power for the Commissioner to carry out a review on the impact and effect of relevant legislation, policies and practices impacting 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 ('a new Inquiry Function'). That could be a review of wider business practices, unrelated to payment matters, specifically impacting small businesses, as well as more diverse issues, for example, barriers to the adoption of payment technology.
- the power for the Commissioner to 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; in addition to his or her current power to investigate following a complaint from a small business. ('an Expanded Complaints Function').
- the power for the Commissioner to compel the disclosure of information in connection with the investigation or a complaint. This power would ensure businesses co-operate more readily with the Commissioner's investigations.
 - the power for the Commissioner to issue a binding monetary award or payment plan in connection complaint where there are adverse findings in relation to the respondent, or else risk facing financial penalties. We envisage this power would compel business to adopt appropriate and fair payment practices, otherwise risk financial penalties. If under the expanded complaints function an investigation was to make findings that payment(s) is due to a small business and has been unfairly or unreasonably delayed or withheld, the Commissioner would issue a decision notice, which would require compensation to be paid to the relevant small business. The award would seek to put the relevant small business into the position it would have been in had it been paid on time and in full. The award would set the amount(s) of the payment in a specified period and, if applicable, what amount of statutory interest is payable. If the Commissioner considers that the business cannot pay the award in the time specified, they may set out a binding payment plan.
 - 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. The Commissioner would only be able to claim investigation costs reasonably incurred in respect of those cases where an adverse finding is made against the business. This power is beneficial as both a deterrent and enforcement measure. It is hoped that businesses would comply more readily with an investigation.