

IMPROVING PROMPT PAYMENT BY GOVERNMENT SUPPLIERS ON PUBLIC SECTOR CONTRACTS

CBI response to the Crown Commercial Service consultation on evaluating payment performance in the procurement of public sector contracts

1. The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce. We work with policymakers to deliver a healthy environment for businesses to succeed, create jobs and ultimately drive economic growth and prosperity.
2. The CBI welcomes the opportunity to respond to this Crown Commercial Service consultation. Paying on time is a cornerstone of good business practice: it is essential to fair and successful working relationships, ensures businesses can support employment and create new jobs in local communities and across the country, and provides businesses the sound financial base they need to plan confidently for the future.

Yet beyond this, companies have a moral responsibility to pay fairly and transparently, being mindful of the impact their payment practices can have on businesses, staff and customers through their supply chain.

The overwhelming majority of firms recognise this and already strive to act accordingly. Yet with small and medium size businesses' late payment debt sitting at £14.2bn¹, it is clear that payment practices continue to fall short of this vision in too many supply chains. This requires urgent action by business – not just because of the social and economic impact of late payment, but more importantly because paying promptly is the right thing to do.

3. Government can help make these necessary changes in behaviour happen by driving greater transparency of payment performance, making best use of existing measures to encourage improvements in performance, and leveraging its own purchasing power to cascade good practice through public sector supply chains.

¹ BACS, 'Late payments costing smaller UK businesses more than £2bn a year'
"<https://www.bacs.co.uk/newscentre/pressreleases/pages/latepaymentscostingsmallerukbusinessesmorethan%2%A32bnayear.aspx>"

Business must improve its payment practices, and government policy can support this by driving greater transparency of performance and ensuring that existing measures have a greater impact

1. Greater transparency of payment performance would be an important lever to driving industry-wide improvement in payment behaviours

The ambition to improve payment performance across industries is the right one and businesses are supportive of action to drive such improvement. The CBI's members agree that payment performance metrics should be used as part of the criteria used to evaluate whether a supplier should be awarded a public sector contract.

- 1.1. In using data to evaluate a supplier's bid for a public sector contract, procuring agencies should consider historical performance alongside the steps a company is taking to improve its payment performance – where necessary – and the supporting evidence it supplies. Clearly, a business which fails to display a commitment to improving payment practices, or evidence of making those improvements, should not be in pole position to win public sector contracts.
- 1.2. Through the measurement and publication of payment performance, companies can benchmark themselves against direct competitors in their primary sector as well benchmarking against the practices employed in other sectors. The public availability of this data will inspire companies to progressively improve their performance.

"If the performance of companies in terms of the payment of undisputed invoices is publicly available, then companies will be encouraged to achieve the best performance possible."

Professional services and technologies provider

- 1.3. In achieving a data-driven approach to improving prompt payment performance, government will need to consider the metrics it requires a business to report on. The narrative, statistical and tick-box information included in the Small Business, Enterprise and Employment Act 2015 'Duty to Report' requirements provide a useful basis for these metrics.
- 1.4. A particular focus should be on the percentage of payments made to standard terms. This metric would deliver a clear picture of which businesses are not behaving in a responsible way by failing to comply with the commercial agreements they have put in place.
- 1.5. Collecting evidence to benchmark performance on paying within specific timeframes – for example, within 30, 30-60, 61+ days – is important to achieve full transparency of payment behaviours. Market dynamics typically set the payment practices and these differ between sectors. With many businesses holding commercial agreements with partners of different sizes, in different sectors and in different geographical locations nationally and internationally, over varying periods of time, it is inevitable that they will have agreed specific payment terms that respond to the different market pressures and drivers of individual sectors. Consequently, while standard payment terms offered to supply chains can vary even for a single company, where these are known and transparent – and honoured – business up and down supply chains in those industries remain able to plan and have greater commercial certainty of their short and medium-term future.
- 1.6. Companies across different sectors have also suggested that more data should be collected around the standard of invoicing in their industry. Businesses consistently report that raising and submitting payment invoices is fundamentally an administrative process where mistakes can and

do occur: for instance, delayed payment can be due to errors in the original invoice, missing information, or a lack of alignment between invoice dates being used to measure payment terms i.e. the difference between the date an invoice is raised and when it is received by a company's processing department. The government should consider evidence supplied by business on the percentage of invoices it processes that are able to be handled 'first time'.

- 1.7. Government should work with business to identify the administrative and handling errors that can cause payments to be made late, and then collaborate to develop ways of standardising invoicing processes on public contracts. Government and industry could investigate how using digital invoicing technologies on public sector contracts could reduce errors and confusion, consequently reducing the chances of payment disputes arising and avoiding a delay in businesses making payments on time. Digital processes would also enable government to get a clearer view of the payment behaviours that exist on public sector contracts at lower levels of the supply chain.
- 1.8. Once data is collected, published and available, some businesses will need to be given time to improve their performance. Benchmarks create standards to adhere to, and some companies will already be meeting them, and others will need to improve. For those facing the greatest performance challenges, this should be seen as a journey, albeit one in which the firms in question must be active and engaged participants.

2. Government should look to make more effective use of existing measures to drive prompt payment before introducing additional regulatory requirements

- 2.1. In existing regulation, such as the Small Business and Enterprise Act 2015 and Public Contracts Regulations, as well as the voluntary Prompt Payment Code, government already has important mechanisms through which to drive the intended improvement in prompt payment.
- 2.2. The CBI's members, particularly SMEs, have highlighted that these initiatives need further promotion so that businesses have clear understanding of the frameworks in which the companies they work with should already be operating, and measures to hold them to account.
- 2.3. Business has raised concerns that introducing new legislation would make the breadth of regulations difficult to navigate and queried how a new scheme would work in conjunction with the existing initiatives. The government should therefore look to evolve existing policy and initiatives to drive improvement in prompt payment performance. The Public Contract Regulations mandate 30-day payment terms throughout the supply chain on public sector contracts, yet this does not always happen in practice. This is because visibility of payment performance beyond tier 2 level (i.e. those firms supplying into a government supplier) is currently difficult to monitor.
- 2.4. Government should consider asking suppliers to provide payment performance data on public contracts as a specific measure. This would give businesses the flexibility to account for payment performance that might differ between agreements in public and private sector work, while providing government clients with improved visibility of a potential supplier's performance on public sector contracts specifically. Government could also ask bidders to provide narrative evidence or tick-box agreement that contracts they have in place with their own suppliers include clauses to mandate payment being made within 30-days.
- 2.5. Government should also look to enhance the impact of well-intentioned initiatives such as the Mystery Shopper programme. A recent CBI survey found that only 31% of companies overall – and

only 19% of SMEs² – had heard of the programme. By giving the scheme greater resources to address and deal with issues raised by businesses, government can more effectively engage with and analyse the underlying causes of late payment in different sectors. Government can then work with its suppliers to find ways to address these issues collaboratively, rather than passing responsibility back and forth.

2.6. Government should also review the criteria that stipulates whether a business is legally required to comply with ‘Duty to Report’, and consider how these could be adapted to ensure that it receives greater visibility on the range of companies who can supply into government – or could do in the future.

3. Businesses are in the strongest position to pay promptly when they have a positive cashflow, and government can use its purchasing power to drive this

“Improved payment performance by both government and private clients would incentivise prompt payment, as collecting client payment has a major impact on cash flow and the resulting ability to pay suppliers quickly”

Security and risk consultancy

3.1. As it has itself acknowledged, government is one of the biggest clients across the UK economy, and it has an opportunity to lead by example in displaying the behaviours of a ‘responsible client’. By ensuring government suppliers receive payment in a timely and transparent manner, those businesses can deliver payment through the supply chain faster.

3.2. A collaborative working relationship between client and supplier in public sector contracts is critical to achieving this, which in practice requires a partnership focused on driving long-term value, rather than just the reduction of costs in the short-term.

3.3. The CBI’s members have told us that they often have strong working commercial relationships with public sector clients. Yet the operational side of payment approval is frequently carried out by teams separate to this relationship, which can cause delays to approval and disputes over amounts owed. By better aligning the commercial and operational teams within procuring bodies, issues around payment from clients to suppliers can be more transparently addressed, and more quickly resolved, which would strengthen the success of a well-functioning client-supplier relationship.

3.4. Government has a strong record of paying invoices within 30 days of them being raised. However, businesses are concerned that public sector teams are slow to approve invoices, and that contract change or disputes between clients and suppliers readily allow public sector clients to hold back all payment until issues are resolved.

3.5. This conflation of payment issues with wider contract issues can result in suppliers using their balance sheet to fund advanced costs at the beginning of a contract, as well as running costs throughout the duration, potentially without having been paid anything by the client. This naturally makes it harder to release the funds due to its own supply chain, creating a clear knock-on effect for smaller businesses in the lower tiers. For industries where profit margins are slim, delay in receiving payment from clients is cited as the most common cause of delayed payments through the supply chain.

² CBI Public Sector Procurement survey June 2018

3.6. Government should therefore consider options it has at its disposal to contribute to creating a positive cashflow through supply chains. For example, provision could be made to structure payments over the lifetime of a contract, or align payment periods with contract stages or milestones so that payments can be certified and signed off as a contract progresses.

3.7. More flexible payment provision of this kind would allow suppliers to receive payment for works completed and agreed, delivering a more consistent release of funds to a supplier during their engagement on a project with the procuring client, while still ensuring the public sector client isn't in a position of paying the full capital expenditure up front, and at risk of needing to recoup money later in the contract.

ENDS

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