FIS Consultation Response:
Late payments: tackling poor payment practices

Below sets down the formal response from FIS to the Late payments consultation: tackling poor practices. Published 30 July 2025. This response has been circulated for comment to FIS Members. Please send any comments to iainmcilwee@thefis.org by 20th October 2025

FIS Responses to the Consultation Questions

Q1 Name: Iain McIlwee

Q2 Email: iainmcilwee@thefis.org

Q3 Capacity: Trade Association

Q4 If you are responding on behalf of a representative body, make it clear who the organisation represents and, where applicable, how the members' views were assembled

Finishes and Interiors Sector (FIS) is the representative body for the £12 billion finishes and interiors sector in the UK.

In 2023 FIS published The Reading Report 2023[i], a detailed study undertaken by the University of Reading into the Procurement and Contracting Behaviours in the Finishes and Interiors Sector. Qualitative interviews and quantitative surveying of around 300 companies gave insight into procurement, contractual management and, specific to this consultation, issues pertaining to payment and retention. The report describes a broken model that, from the outset, creates unequal and adversarial relationships. These behaviours not only limit the potential of the sector, but contribute to labour shortages and an insurance, credit and mental health crisis in construction.

To build on this research, FIS published A Blueprint for Better Construction this has been widely circulated and discussed with members. This document reflects the position set down in this consultation response on retention and late payment.

FIS regularly surveys members on retention and late payment practices, which demonstrates that little change is evident despite reporting requirements introduced in 2017. In the development of this consultation response, FIS has attended a round table with DBT officials and specialist trade bodies, hosted a webinar for members that enabled DBT officials to present the key elements of the consultation to members (this webinar was recorded and made available to all members). The detail of the consultation and an opportunity to discuss the issues and response has been embedded into all working groups, regional meetings and at the FIS Board Meeting. A draft of this response was circulated to members for comment on week commencing 6th October and comments have been reviewed to help shape this response.

- **Q5. Size of business (if applicable)**

  The FIS community is made up of over 600 businesses; contractors, manufacturers and distributors of ceilings, steel framing systems, partitions, operable walls, plastering, drylining, and specialist interior fit-out and refurbishment businesses.

- **Q6. Name of business, organisation or representative body:** Finishes and Interiors Sector
- **Q7. Region:** UK
- **Q8. Sector:** Finishes and Interiors Sector, part of the UK Construction Sector

9a To what extent do you agree that Audit Committees, where companies have them, should provide commentary and make recommendations to company directors before data is submitted to Government and included in Directors reports?

Strongly agree.

9b To what extent do you agree that the Small Business Commissioner should write to audit committees and company board, where companies have them, when undertaking payment performance reporting assurance and when investigating any other matter relating to a companies' payment practices?

Strongly agree.

9c Are there any potential unintended consequences or considerations that could happen if this measure was introduced?

None that we can identify. It is imperative that if the SBC is given greater powers the resource needed to undertake enforcement activity is made available.

9d Please explain the reasons for your answer to question 9c.

Not applicable

10a To what extent do you agree that limiting UK payment terms to 60 days at a maximum will be effective in addressing the stated problem of long payment times?

Strongly agree.

10b Please explain the reasons for your answer to question 10a

Under current legislation, public sector contracts are required (through the Procurement Act) to adhere to payment terms of no more than 30 days, private sector contracts are subject to a 60-day limit. However, the law allows for payment terms exceeding 60 days provided they are not "grossly unfair."

The term "grossly unfair" does not have a clear legal definition and is therefore difficult to enforce, which ultimately undermines the intent of the legislation.

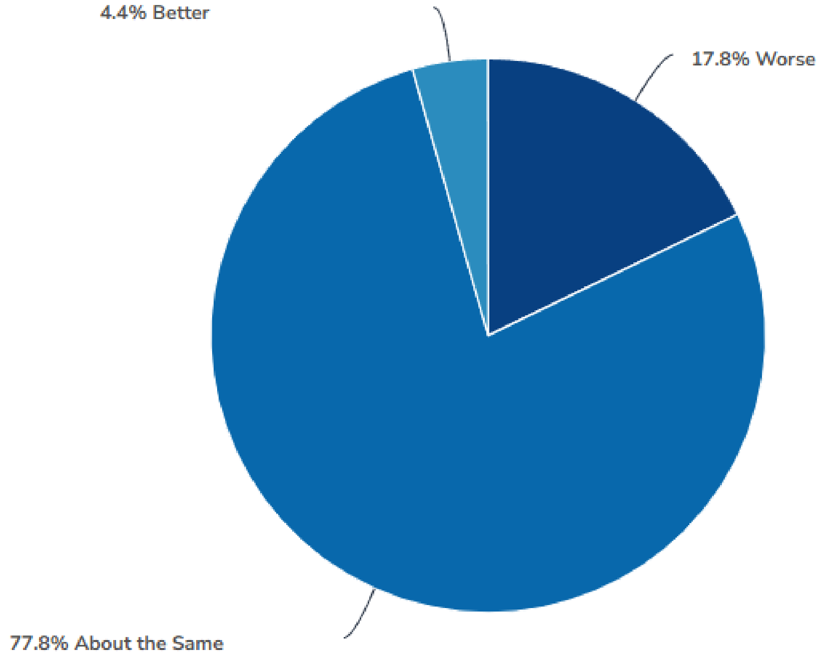
The latest BuildUK Construction Sector Performance table currently shows that 15% of companies listed pay more than 25% of their invoices (by volume) in over 60 days. This is not acceptable.

In The Reading Report in 2023, Professor Stuart Green concluded:

> *"Reflecting on the results in respect of payment practices more generally, the overall message is that the sector is falling significantly short in ensuring equitable financial arrangements and certainty of payment. This is especially the case for specialist subcontractors who invariably lack the resources or negotiating power to offset poor payment practices. Payment practices simply are not improving for most in the market."*

Below was based on data gathered by FIS in April 2025, the numbers are consistent with the assertion above and demonstrate little improvement in the past 2 years.

11. How have payment practices changed over the past 12 months?



The practice forces SMEs to absorb the financial burden of project delivery, effectively financing the client's business model. It is notable too that construction firms are typically paid in arrears with the first application not due until 30 of work have been completed (sometimes longer, see comments in subsequent section on how pay less notices and disputes can at to delays).

The reality of payment at 60 days is that companies are at least three months into a job before they see any money. As a consequence, heavy use is made of credit and charge cards and other relatively expensive forms of finance, which add cost (often hidden) into the project and create additional business and personal liabilities.

The consequences are significant:

- Increased solvency risk due to delayed income and exposure to bad debt
- Restricted cash flow limiting operational flexibility and resilience with a knock on likely to other concurrent projects
- Reduced capacity for growth investment in staff, skills and innovation
- Adds cost and ties up vital resource needed to chase payment
- Causes distress through the supply chain.

Action is essential to end this practice.

10c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No.

Q10d Please explain the reasons for your answer to question 10c.

Not applicable

Q10e What exemptions, if any, do you think should apply and why – for example, in specific sectors or in particular circumstances?

There should be no exemptions, this would only complicate and undermine intent. If the rules are clear, companies will arrange the payment process accordingly and vitally stick to it. In fact, FIS would like to see consultation on whether this is further reduced from 60 days to 45 days sooner than the 5 years suggested in this consultation.

One potential complication is that Housing Grants, Construction and Regeneration Act 1996 (Construction Act) does not explicitly define an "invoice". For construction it is important to underpin that an Application for Payment should be considered as an invoice as per the definition within guidance that supports the Duty to Report Regulations - an invoice is “a formal request for payment issued by a supplier”. Currently the status of this definition is guidance and with limited enforcement of the Duty to Report it remains unclear as to whether this definition is applied by all for reporting purposes (which in turn means the current situation could be worse that initial inspection suggests).

1. **11a To what extent do you agree that introducing a 30-day time limit on the ability for businesses to dispute invoices will be effective in addressing the stated problem of the deliberate disputing of invoices to extend payment times?**

Strongly agree

11b Please explain the reasons for your answer to 11a

Late payments in construction are often masked by delaying tactics. Below is a quote from an FIS member shared in September 2025:

> *“Each month you receive your payment certificate and it’s clear that they haven't even looked at your application but just plucked a figure out of thin air and then stuck it in a box at the bottom with some rounding up numbers to try and make the overall sum work and the gap between claimed and paid just keeps increasing.*
>
> *Well I can and its what we experience every month on one of our projects and the usual excuses of sorry we are short staffed or we will make it up next month just don't even register anymore.*

Currently the Construction Act provides for a statutory payment process of a: due date, payment notice date, pay less notice date and final date for payment. The payer then has two opportunities under the Act (prior to the final date for payment) to dispute applications/invoices and must pay the amount in the last notice. There is no limit on the period that process can take.

Previous comments around definition of invoice are also relevant here.

11c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No.

11d Please explain the reasons for your answer to question 11c.

Not applicable

11e Are there more effective ways the Government could prevent frivolous disputing of invoices?

A 30-day time limit on the process for disputing applications under the Housing Grants, Construction and Regeneration Act is critical.

Failure to comply should enable businesses to apply directly through the courts in a fast-track process to be paid.

12a To what extent do you agree that all qualifying contracts being subject to mandatory statutory interest on their late payments without exception will address the stated problem and help incentivise paying on time?

Strongly agree

12b Please explain the reasons for your answer to question 12a

We need to remove incentives to hold on to supply chain money, the problem is widespread. The Reading Report noted that:

> *"..main contractors are usually paid more quickly than subcontractors. A notable exception was that 7% of main contractors reported typically waiting for 60+ days from initial application prior to being paid. The equivalent figure for subcontractors was 2%. In contrast, 46% of subcontractors reported waiting for 40-59 days in comparison to only 24% of main contractors. Perhaps most strikingly, only 6% of specialist subcontractors reported being paid within 30 days. The equivalent figure for main contractors was 10%"*

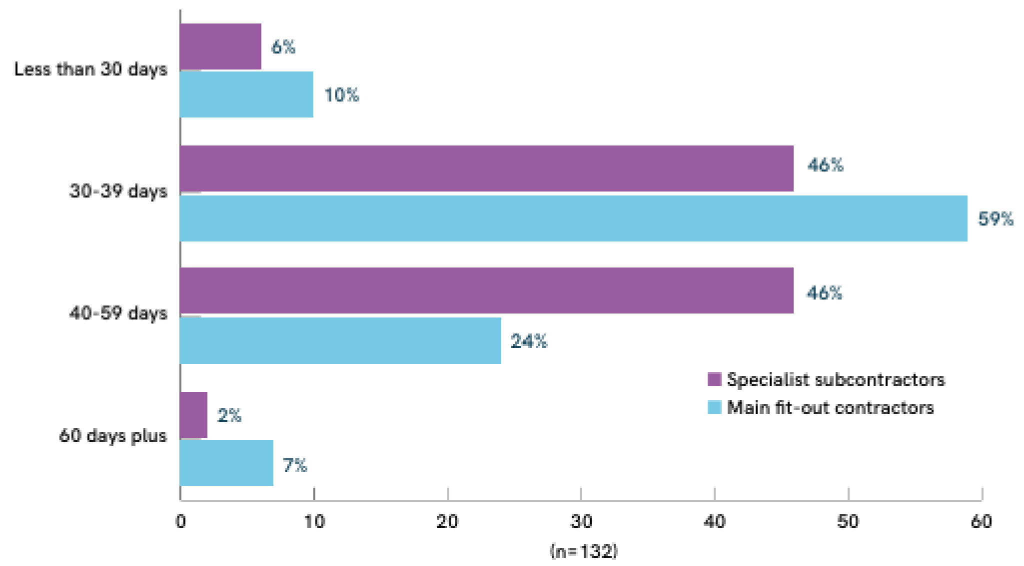


Figure 8.1

Source: University of Reading

Promptness of payment

Reflecting on the last 12 months, how long after your initial application for payment do you get typically paid?

Referencing again the BuildUK Construction Sector Performance table, two national house builders (Vistry Homes Limted and Countryside Properties (UK) Limited) top the table in terms of not paying invoices within the agreed period, averaging 47% and 53% of their invoices being paid outside of terms. Total value of payments due in the reporting period which have not been paid within the agreed period for these two firms equates to an eye watering amount, in excess of £0.5 billion.

Currently, clients through their contracts, routinely lower or remove the right to claim statutory interest on late payment and just getting paid what you are owed can become a negotiation. In this adding interest is discouraged and the concept as currently implemented has little or no impact.

Making it a legal requirement for the payer to add interest would add a disincentive to pay late and help to ensure that businesses paid late are suitably compensated.

Again a small claims type process to secure interest payments where it has not been added should be easy to access with upheld claims reportable through reporting mechanisms set down and fines imposed.

12c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No.

12d Please explain the reasons for your answer to question 12c.

Not Applicable.

2. **13a To what extent do you agree that requiring businesses that report under the Reporting on Payment Practices and Performance Regulations 2017 to report how much interest they owe and pay to their suppliers as a result of late payments will help incentivise reporting businesses to improve their payment practices?**

Strongly agree

13b Please explain the reasons for your answer to question 13a

This is essential for three reasons:

1. Reporting provides the necessary transparency, so companies can be reviewed internally and by clients to ensure that they are working with ethical and progressive businesses.
2. Supply chain businesses can effectively appraise whether they want to work for a business based on demonstrable metrics on how they treat the supply chain
3. Data gathered can also be used at a macro level to measure the impact of policy and support further refinement if required.

13c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No.

13d Please explain the reasons for your answer to question 13c.

Not applicable. We have a concern that complexity will be used by some as an excuse to push back on this, it should be noted that digital payment tools facilitate and are readily available. It is not reasonable to push the cost and pain of late payment into the supply chain.

3. **14a To what extent do you agree that introducing financial penalties for large businesses persistently paying their suppliers late will address the stated issue and incentivise reporting businesses to pay on time?**

Strongly agree

14b Please explain the reasons for your answer to question 14a

Introducing fines for late payment is not punitive—it's preventative and transformative. This principal has been applied successfully in the UK in other areas such as:

- Competition law: fines for anti-competitive behavior.
- Data privacy: ICO fines for GDPR breaches.
- Health & safety: HSE fines for non-compliance.

These systems are self-sustaining, with fines funding enforcement and deterring misconduct.

It is important to ensure that, despite restricted powers with respect to construction the Small Business Commissioner retains the right to impose fines on construction companies.

14c Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No

14d Please explain the reasons for your answer to question 14c.

Not applicable

14e To what extent do you agree that linking financial penalties for consistently late- paying businesses to their unpaid statutory interest liabilities is a proportionate and effective approach?

Strongly agree

14f Please explain the reasons for your answer to question 14e.

The current solution -symptom based - relies on deterrents to late payment which force the payee (missing money) to spend money to challenge the payer (holding on to money) to recover the monies owed. Due to time and cost considerations the current system is therefore cost prohibitive and puts the focus on SMEs as payees to challenge poor behavior of large firms/payers which is a disproportionate and ineffective approach which does not drive behavioral change. Larger companies routinely take advantage of this.

4. **15a To what extent do you agree that the introduction of the new powers for the Small Business Commissioner will be effective in improving compliance and enforcement of new and existing regulations around payments?**

Strongly agree

15b Please explain the reasons for your answer to question 15a

We have long raised concern that, to date there has been no enforcement of the duty to report, and that The Office of the Small Business Commissioner needs more authority so that poor companies don't get away with ignoring vital regulatory requirements.

15c To what extent do you agree that the introduction of the new powers for the Small Business Commissioner will enhance its ability to support small businesses to resolve payment disputes?

Strongly Agree

15d Please explain the reasons for your answer to question 15c

No

15e Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

No

15f Please explain the reasons for your answer to question Q15e.

Whilst we Strongly Agree, we have concern that the intent is not to extend powers of the SBC to encompass construction. This would potentially leave construction, one of the worst effected sectors without the same protections as other parts of the economy.

The process and cost of adjudication had grown beyond intended and it does not in totality offer the simple and rapid means to resolve disputes. According to the King's College London's Centre of Construction Law and Dispute Resolution highlights growing concerns over its affordability, efficiency, and accessibility, particularly for SMEs.

Typical hourly rates now range from £301–£350, with some exceeding this. These costs are disproportionately high for low-value claims, discouraging smaller firms from pursuing adjudication (only 4% of adjudications involve claims under £25,000).

5. **16a To what extent do you agree that the requirement for businesses to report under the Payment Practices and Performance Reporting Regulations should be changed from twice a year to once a year?**

Strongly disagree

16b Please explain the reasons for your answer to question 16a

If reducing the timeframe, it would limit the value to all parties i.e. SMEs and clients could not see adverse trends in time.

6. **17a To what extent do you agree that prohibiting the use of retention clauses in construction contracts would be effective in addressing the stated problems associated with retention?**

Strongly Agree

17b Please explain the reasons for your answer to question 17a.

Publicly there is consensus across the sector that the retention culture is negative. Added to this there is significant risk to the supply chain from insolvencies when retention is held.   The failure of Carillion which is estimated to have taken £250m-£500m of retention monies out of the market. The full figure from ISG is currently unknown, but it is believed retention was held on 539 outstanding projects and likely to run to tens of millions.

At any one time, it is estimated that in England alone, between £300 and £600 million of retention money is withheld on companies working in the finishes and interiors sector.

Data below is taken from The Reading Report 2023 – it highlights the significant problem associated with timing and release of retention in the finishes and interiors sector.

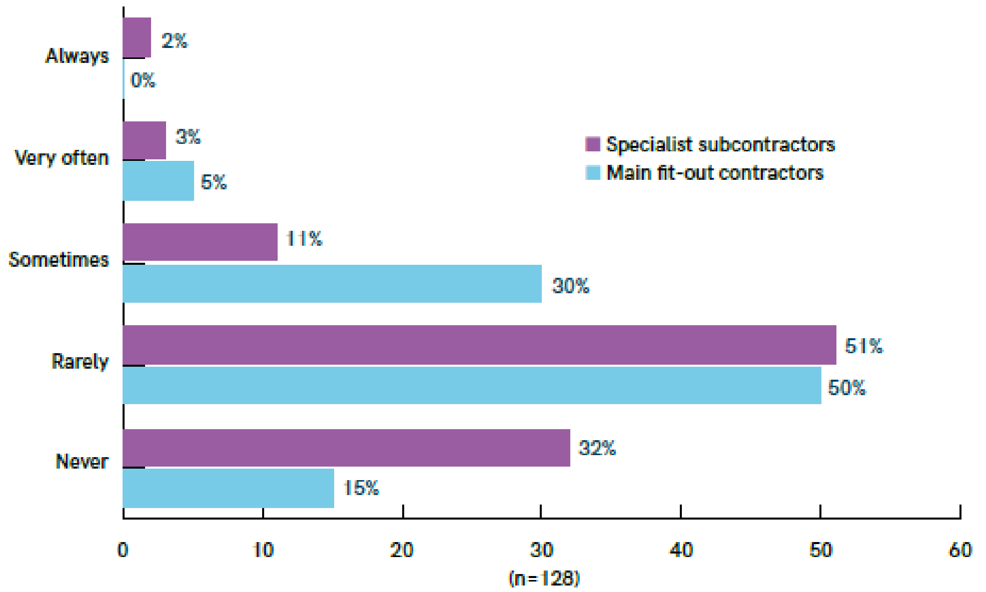


Figure 8.3 Source: University of Reading

Release of retention monies

How often are retention monies automatically released at the contractually agreed time?

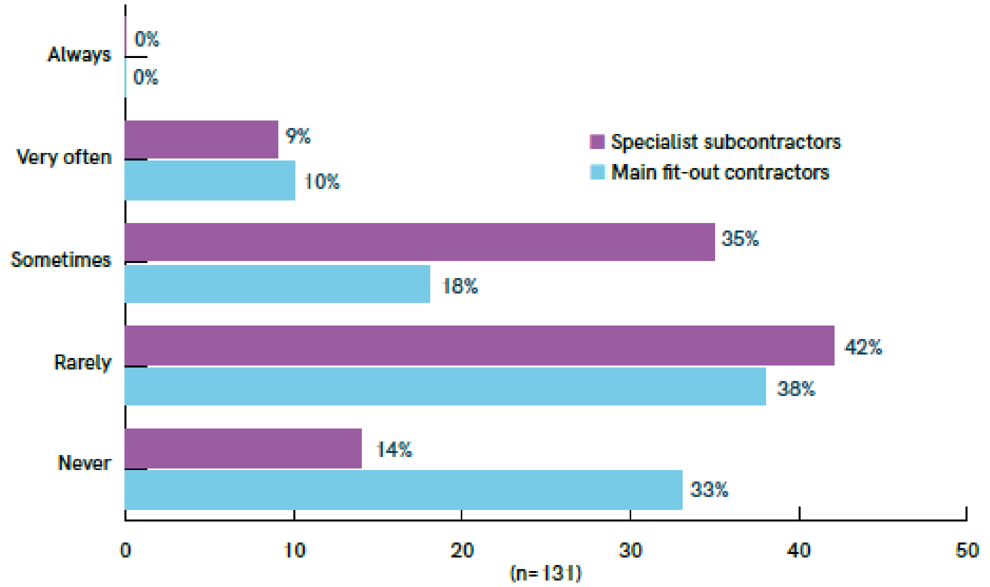


Figure 8.4 Source: University of Reading

Failure to recover retention monies

How often do you fail to recover retention monies to which you are contractually entitled?

A key finding of the report was:

> *"Equally contentious are the responses relating to how often respondents fail to recover retention monies to which they are contractually entitled (Figure 8.4).*
>
> *The responses suggest that main contractors are much more successful than subcontractors in ensuring recovery. 33% of main contractors report that they never fail to recover monies to which they are due; the corresponding statistic for subcontractors is 14%. The other striking difference is that 35% of specialist subcontractors reported that they sometimes fail to recover retention monies, but that this was only true of 18% of main contractors.*
>
> *The explanation for the better performative of main contractors in pursuing retention monies probably lies in the resources they dedicate to effective credit control. In contrast, subcontractors typically do not possess the necessary capacity and/or expertise to ensure that retention monies are recovered."*

A legislative prohibition on the use of retention clauses in construction contracts would be the simplest methodology to deliver change.

This would need to be combined with steps to prevent alternatives methods of delaying payment being created.

18 Under a prohibition on the use of retention clauses in construction contracts, what alternative measures would a payer seek to ensure performance and quality from a supplier? Please explain the reasons for your answer.

Performance and Retention Bonds: Concerns expressed include availability and potentially another tier of cost applied to all projects.

Parent Company Guarantees: This process can be disproportionate and undermine the principles of Limited Companies.

Better Supply Chain Management: A focus on less disposable relationships and the need for punitive and blunt measures to support what is effectively good practice and already covered in obligations clear in construction contracts.

19 What length of transitional period would be required for a payer to adjust to the ban measure? Please explain the reasons for your answer.

Ideally 12 months – there is no real transition required, a date would need to be established and contracts signed after the transitional date will not support retention. Moving forwards, some communication would be necessary. The change to Standard Form Contracts may take a little time (although this is based on slow-response historically and the correction would actually be simple), but in the meantime companies could just set the level of retention to zero.

7. **20 Please provide an estimate and an explanation of any costs firms would incur as the result of prohibiting the use of retention clauses in construction contracts.**

Costs would be typically 2-5% of the value of the Bond (which would in itself be relevant to the size of the project and perceived risk).

It the belief of the FIS that the client should secure the bond if they believe it is required rather than placing the obligation on the supply chain who already are obliged through contractual levers to react to any inadequacy in the work.

8. **21a To what extent do you agree that requirements to protect retention sums deducted and withheld under retention clauses in construction contracts would be effective in addressing the stated problems associated with retention?**

Strongly agree

21b Please explain the reasons for your answer to question 21a.

If abolition is not possible we cannot do nothing and therefore FIS would support policy to protect retention sums withheld under retention clauses in construction contracts. This measure would effectively address key problems associated with retentions, particularly the abuse of the mechanism and the loss of funds due to insolvency.

Protecting retention sums — for example, by requiring them to be held in trust or in project bank accounts — would safeguard these funds from misuse and insolvency. It would ensure that retention money is available when due and released fairly, improving cash flow and reducing disputes, effectively disincentivising dispute. Key to this is ensuring that the payer cannot benefit from any interest (or rebates / commissions from providers of trust systems).

This approach has been successfully implemented in other jurisdictions, such as New Zealand and parts of Australia, where statutory protections have led to better payment practices and greater financial security for suppliers.

For retention in trust to be truly impactful changes to regulation should ensure retentions are automatically released at the defined date. They should not require additional applications from contractors or relate to dates that are not explicitly related to the completion of their works.

In the words of an FIS Member:

> *"In the 8 years I have been an owner of <this company>, we have lost out on £70k worth of retention payments due to insolvencies. These monies left held against us formed part of our final account agreement figures. Lossing these funds against works we had physically completed and paid out for on material and labour, reduces our profit. On occasion to a point of what was the point of completing that project.*
>
> *The bigger issue is companies trading insolvently and the pot runs out even before retention even fall due. We 100% back scrapping of retentions but not that liability against defective work is in anyway removed. More needs to be done to stop main contractors being able to end up in such a financial mess, taking on new*

sub-contracting companies, racking up further debt and taking down the rest of the supply chain due to pure negligence."

9. **22a What would be the preferred mechanism of a payer to protect the retention sums?**

Protection via a digitised trust account.

22b Please explain the reasons for your answer to question 22a.

It is vital that retention sums are not seen as working capital and clearly ring-fenced in trust (to avoid any perceived incentive) and ensure the risk insolvency is covered.

10. **23 What length of transitional period would be required for a payer to adjust to the retention protection measure? Please explain the reasons for your answer.**

This would likely be more complex for businesses, but again 12 months would be a realistic timeframe.

11. **24a To what extent do you agree with the proposed features of the retention protection measure?**

Strongly agree

24b Please explain the reasons for your answer to question 24a, including any further features to the design and operation of this retention protection measure that you would recommend.

Taking retentions from the final payment only would simplify the administration greatly. Consideration should be given to a reasonable cap.

12. **25 Please provide an estimate and an explanation of any costs firms would incur as the result of the introduction of a framework for protecting retention sums.**

From the work we have done consulting with providers of retention trust schemes, the cost would be easily within the interest rates that the accounts would generate. We do believe that some controls should be put in place to ensure that the level of fees are controlled and not disproportionate to the level of service provided/

13. **26 Are there any potential unintended consequences or considerations that should be taken into account for the introduction of <u>either</u> proposed measure for the use of retention clauses in construction contracts? Please explain the reasons for your answer.**

These have been covered in above.

27 Do you have any further comments on <u>either</u> proposed measure for the use of retention clauses in construction contracts?

No

14. **28 Do you have any further comments on any elements of the proposals that might aid the consultation process as a whole?**

If moving to a Trust model, time should be taken to understand any limitations emerging from New Zealand to ensure that we learn from lessons elsewhere.

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[i] The Reading Report 2023 - Research conducted by the University of Reading into the Procurement and Contracting Behaviours in the Finishes and Interiors Sector