

Government consultation on payment performance reporting

Suggested Template response

As part of a wider [review](#), the [Government](#) is consulting on amending the Regulations which require large businesses to file statutory reports on their payment performance so that SMEs can use that data to inform their business decisions – effective a free open source of credit checking.

Data is available [here](#) - the payment performance of some, but not all, operating in construction is published [here](#) in a league table. This transparency allows SMEs to move away for the worst payers and reward the better payers with loyalty, driving out poor payment practices.

The data measures the average speed at which payers pay and the percentage of payment within 0-30, 30-60 and 60+ days. However, those averages do not take account of the values of those payments, so the data shows one half of the payment picture performance.

WE ARE TRYING TO REMEDY THIS AND WE NEED YOU TO RESPOND DIRECTLY, AS THE GOVERNMENT WILL LISTEN IF IT HEARS FROM A LARGE VOLUME OF SMES!

Please copy the following and paste into an email from your business and send to responsiblepaymentculture@beis.gov.uk

I am responding on behalf of my business which is an SME working in construction.

Question 1: Do you agree that the Regulations should be amended to extend their effect beyond 6 April 2024?

Yes

It is important to have a measure of payment as our experience is that payment is not improving. The system has potential, if refined to provide us vital metrics on payment behaviour to inform our commercial decisions. Removing this legislation would be a backward step to SMEs like ourselves who operate in UK construction.

Question 2: Do you agree that the Regulations should be amended so that a qualifying business is required to report the total value of payments due in the reporting period that have not been paid within agreed terms?

Strongly agree.

Metrics on the average percentage of payment made within 0-30, 30-60 and 60+ days are useful, but do not give us a true picture of payment performance, unless we also know the value of payments being made within those timeframes.

The reality in construction is that things are not improving. In a recent survey conducted by the University of Reading into our sector, only 10% of specialist contractors experienced any improvement with 21% noting has worsened and the vast majority experience no real change. As it stands small invoices (for items like stationary) can be drowned out by large invoices for construction works and companies could report positive numbers, whilst still paying suppliers late and effectively using the supply chain as a cheap source of finance. The cost of this in the current climate with interest rates rising is a real concern.

A measure of value is essential.

Question 3: Do you agree that it should be a requirement for a reporting business to include their payment practices and performance reports in their directors' report?

Strongly agree

Directors have certain statutory duties including s.172 of the Companies Act which require all directors to have regard (amongst other matters) to the likely consequences of any decisions in the long term and the need to foster the company's business relationships with suppliers, customers, and others, but they also have a duty to put the company's best interests first.

There is also a real occupational safety issue to consider - big businesses have a responsibility to their supply chain and the wider ecosystem that they support. Mental health in construction is a real cause for concern and poor payment practices ultimately exacerbate this issue.

Question 3a: Do you agree that making it a requirement for a reporting business to include their payment practices and performance reports in their directors' report is a sufficient additional requirement for a reporting business?

Strongly disagree.

Making it a requirement for a reporting business to include their payment practices and performance reports in their directors' report will be another step towards giving the regulations teeth.

However, we would question how, without spot checks and independent audits, the data or directors' statements referencing their data and performance trends can be verified.

Whether a director has breached the duty under s.172 in making the statement, is a subjective test as to whether the director honestly believed that their act or omission was in the interests of the company. The issue is as to the director's state of mind, and the standard of review by the courts is whether the decision was one that no reasonable director could have considered to be in the company's best interest.

We would also recommend that guidance related to how invoices are recorded in construction (i.e. paragraphs 56 and 57) are emphasised in this process to avoid abuse of the system in other ways.

This is incredibly difficult and expensive to prove making the remedy solution of a putting the payment performance reports and practices in a director's statement insufficient additional requirement.

Question 4: Do you agree that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used?

Strongly agree.

Counting SCF payments within the payment performance of a payer should not count towards the payers' payment performance.

Being paid under a SCF arrangement may require fees for being paid on time by the SCF provider. Further those payments may also require us to agree a to repayment (claw-back) arrangement where the payer does not pay the SCF provider.

SCF was meant to be a way of small businesses getting paid earlier, instead it is a way of large businesses introducing further liquidity into their own system, whilst ensuring their payment performance remains positive.

SCF therefore becomes another way of gaming the system.

We all know that putting clarifications like this in the statutory guidance for clarification means it does not have to be followed because it is only guidance which is persuasive, but not conclusive evidence in law.

Where a point is important it should become part of the Regulations themselves. The more important point which is in guidance, but needs to be transposed to the Regulations to avoid cheating is on the dates for measurement in qualifying construction contracts.

At present, the guidance clarifies that under construction, payment performance metrics should be measured from the date on which the payer is given notice of the amount due which under the Construction Act, is the application date. Whilst this remains guidance-only, it is open to being ignored and therefore abused - hidden delays can fall outside of the payment performance reports.

This requires urgent correction within the Regulations themselves.

Question 5: Do you agree that the Regulations should be amended to consider disputed invoices as a separate entity, to improve the accuracy and transparency of the reporting data?

Neither agree nor disagree.

Whilst we applaud the intent and it could expose people using dispute to delay payment, it is difficult to see how this would work in practice and how it could be audited.

Question 6: Do you agree that the Regulations should be amended so that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts?

Strongly agree.

Cash retentions for us, represent labour and materials already delivered and installed. They are often abused as the legal costs of recovery are not viable given the amounts involved. Data from the FIS shows that 33% of main contractors never fail to recover retention versus just 14% of specialists who can claim the same.

Whilst it would be difficult to include standard retention payment terms to the reports it is important to look at a metric/statement that would support *increased transparency and public scrutiny of large businesses' payment practices and performance; and provide [us] with better information so [we] can make informed decisions about who to trade with, negotiate fairer terms, and challenge late payments.*

Question 7: Do you agree that the Regulations should be amended so that payment practice and performance reports should include statistical information on retention payments?

Strongly agree

Retentions received and paid should be monitored to ensure unentitled profit is not being realised due to bureaucratic processes disincentivising claims.

Question 8: How many hours does your business spend and which staff are required (please give an indication of hours by level of seniority) in order to comply with the Reporting on Payment Practices and Performance Regulations 2017?

NA

Question 9: What does this cost your business in terms of pay for each level of seniority?

NA

Question 10: What (if any) additional costs did your business incur (beyond staff pay) in complying with the Reporting on Payment Practices and Performance Regulations 2017?

Information on our own credit control personnel, technology, credit rating and external credit advice, costs is commercially sensitive.

Small businesses which dominate construction on average spend 130 hours each year, at an average cost of £1,500 per business, chasing payment, while incurring £180 million in debt interest charges – money that could otherwise be used for investment and growth at a time where the industry desperately needs both capacity and innovation.

The cost of late payment to us is that working capital tied up in bad or delayed debts from debtors restricts our investment in; expansion/growth, innovation/R&D, training/recruitment/skills, office, technology and equipment. This is compounded by payment practices in our industry that operate on a model where we are forced to deliver (and transfer ownership of) goods and materials to clients long before payment is made with the result that we bank-roll the clients' construction process.

The human cost in our sector of late/abusive payment on SMEs is:

- 72% of those paid late experienced stress as a result of late/abusive payment, nearly 30% experience insomnia and 12% eating problems.
- Nearly 30% experienced depression and/or extreme anger and in 34% of cases this also led to anxiety and/or panic attacks.
- Construction workers were nearly four times more likely to take their own life compared with other sectors last year.
- 64% of late/abusive payments impact abilities to sleep and over half of cases saw late/abusive payment cause depression, anxiety and mental health issues.
- 40% of late/abusive payments put their relationships under negative pressure.
- 15% of cases saw late/abusive payment lead to their own struggles to pay rent/mortgages and over, 18% led to reductions on celebrations/presents, 20% to cancellation/delay of family holidays and nearly 30% of cases it led to reduced social activity.
- As a result of late/unfair payment, 59% of SMEs stopped or reduced paying themselves in order to mitigate the impact on their business.
- 25% of the time late/unfair payment leads to training cuts and struggles to pay business taxes, in over 20% of cases a lack of maintenance of office infrastructure, in 15% an inability to refurbish office premises, in 22% of cases this adversely impacted on creditor's personal credit rating and, further, a refusal of credit/finance facilities in 10% of cases.
- In over 30% of cases late/abusive payment led to struggles to retain and/or recruit personnel and had a 22% negative impact on staff productivity.
- In 17% of cases late or abusive payment as takes and SME business to the brink of insolvency.