

Small Business Commissioner Consultation
Enterprise Directorate
Department for Business, Innovation and Skills
2nd Floor, Orchard 2
1 Victoria Street
London SW1H 0ET

20th August 2015

Dear Sir/Madam,

The Institute of Directors welcomes the opportunity to respond to this consultation on the Role of the Small Business Commissioner. The IoD has been a long-standing proponent of transparent pay practices and of the need for businesses to act in good faith in order to maintain strong supply chains. We are signatory to the Prompt Payment Code and James Sproule, the IoD's Chief Economist, sits on the Prompt Payment compliance board.

In drawing attention to the issue of late payment and asking firms to commit to high standards, the Prompt Payment Code has been a useful step along the road to cultural change. The Small Business Commissioner could well be another worthwhile tool for achieving this change. Key to its success, though, will be the speed at which it successfully mediates between firms, ensuring that redress is swift and supply chains do not break down as a result of disputes. It will also need to be well used. Too many initiatives fall by the wayside because public awareness or understanding of them is low.

Many of the questions in the discussion paper are targeted at individual businesses and their experiences of late payments. Without specifically addressing all of these, this response identifies a number of key issues that should be considered in developing the role of the Commissioner. As a representative organisation, the IoD regularly surveys members on policy issues. The results of our December 2014 survey on late payment issues are copied into this response.

About the IoD

The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 71% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members' organisations are entrepreneurial and growth-orientated, and more than half (57%) export goods and services internationally.

The IoD believes that the Commissioner's role should focus on:

Placing the lowest possible bureaucratic burden on businesses

- On one end of the scale, large companies are already required to report on payment policies and practices.¹ Piling on further levels of bureaucracy would be broadly unwelcome, particularly for those caught close to the size threshold for complying with the new rules.
- On the small end, firms seeking redress for late payments may well be struggling to maintain business because of that exact issue. Requiring them to jump through further hoops in order to access mediation may well add to the delay and exacerbate damage to their business. Speed is therefore absolutely essential.

Handling - as far as possible - disputes between small businesses, as well as between small and medium/large businesses

- Admittedly, extending the mediation role of the Commissioner to disputes between sole traders, micro businesses and small businesses would likely add significantly to the burden of the Commissioner. However, not covering these issues would mean overlooking a large portion of the UK's business demography.
- As the discussion paper notes, micro businesses account for 4.9 out of the 5.2 million businesses in the UK, and the rise in the number of UK businesses has been almost entirely driven by the number of people entering self-employment.² Such a large section of the business population cannot be ignored.

Ensuring that businesses are aware of the benefits of the scheme

- As the IoD has recently noted, 'chopping and changing support schemes has been a feature of successive governments, which tends to lead to confusion and low pick-up rates from businesses.'³ Lack of awareness of the initiative would certainly impact the success of the Small Business Commissioner.
- The Department of Business should look to use the channels already in place for accessing businesses. For instance:

¹ [Small Business, Enterprise and Employment Act 2015](#)

² 91% of business population growth since 2000 has been accounted for by non-employing businesses (80% of growth in 2014).

³ Jimmy McLoughlin in the Guardian, Available at:

<http://www.theguardian.com/business/2015/aug/16/government-small-business-scheme-branded-a-failure>

-HMRC is (at least) in annual contact with businesses. Interim findings on the Growth Voucher Scheme showed that including information on the programme in HMRC 'email shots' lead to a 'much welcomed rise in programme applicants'. Information on the benefits of using the Small Business Commissioner should be delivered in the same way.

-Similarly, **Companies House** is in a position to provide new registered businesses with information and advice on BIS schemes.

-There are 3 million unregistered businesses in the UK, many of them sole traders operating online through sites like EBay. The Department for Business should engage with **online trading marketplaces** about how best to reach these businesses.

-**Business Groups** also have access to large numbers of businesses and provide them with up to date information on relevant schemes. The IoD's Information Advisory Service is a good example of this.

Protecting the anonymity of complainants as far as possible

- It remains the case that a large number of firms will not want to make their grievances for fear of damaging relationships with customers or breaking down supply chains.
- These firms should be allowed to bring a complaint against a larger firm **anonymously**, and where a significant number of complaints are lodged against that specific firm, the commissioner should consider investigating. Although this will not address immediate and specific cases of late payments (as mediation would), it would allow the commissioner to identify the worst performing firms and ensure that they can be held publically accountable.

Providing advice on reducing the complexity of payment practices

- While late payments as a result of retrospective contract changes or 'pay to stay' clauses tend to be the most high profile of late payment practices, large numbers of businesses simply find the complexity of some payment practices to be the main issue.
- In a survey of IoD members, of those who had experienced problems (615 individuals), **nearly half (47%) said the main reason for late payment was excessively bureaucratic payments systems** or overly complex terms and conditions. 1 in 8 (12%) said that payment had been delayed because the company being invoiced had changed the payment terms. Only 5% said the reason for late payment was a dispute over the invoice.

Further IoD member statistics on late payments: December 2014

- **Two-thirds (66%) said they had had issues with late payments of invoices**, compared to a third (34%) who said they hadn't
- **Half of SMEs who had issues with late payment said that it had forced them to change business decisions.** 13% were unable to grow their business as planned because of problems getting invoices paid, while 10% said they had to reorganise their financing arrangements.
- **Over a quarter (28%) said they had been compelled to delay payment to their own suppliers, showing that one failure can affect the whole supply chain.**

We hope you find our comments useful and look forward to seeing the results of consultation and to engaging further on policy changes. If we can provide more information on any of the issues discussed, please do not hesitate to contact me.

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