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## **Late payment and 'grossly unfair' terms and practices: changes to the regulations**

The IoD welcomes the opportunity to respond to this consultation, which comes hot on the heels of a string of Government measures, aimed at tackling the issue of late payments affecting small businesses. The IoD regularly tracks the impact of late payment on its members and the latest published statistics are included at the end of this document. We recognise it is an issue for small businesses but also note that it is a complex one.

### **About the IoD**

*Founded in 1903, and granted a Royal Charter in 1906, the IoD is an independent, non-party political organisation of around 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. Approximately 92% of FTSE 100 companies have IoD members in management roles, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises, ranging from long-established businesses to start-up companies.*

### **Questions:**

- 1. Do you agree that representative bodies should have the flexibility to take action on behalf of individuals and groups? If not, why?**

Representative bodies **with the appropriate resources** could feasibly take on cases on behalf of individuals or groups. However, it will be the case that representative organisations may have to significantly alter their membership offering in order to accommodate the new 'flexibility'. The costs of adapting to new models will likely be high for many of those bodies, a cost that will be passed on to members.

Representative bodies will have to decide whether the cost of changing offerings to include a legal representative function will come at the expense of other services and indeed, whether the demand is high enough within their membership to warrant such a shift.

The IoD has an Information Advisory Service that provides members with tailored legal advice. While this service is an invaluable and popular part of the membership offering, only a small number of the enquiries that come through the service relate to issues around late payments. Indeed, there have been fewer than 10 enquiries on the issue over the past year, while the service receives between 1300 and 1500 requests for advice each month. It is also the case that only 5% members who have suffered from late payments cite a dispute over an invoice as the cause. Many more members cite complexity and overly bureaucratic payment systems as the reasons for late payments.

This being the case, we anticipate that there will not be extensive take-up of the scheme outside of those who have already indicated that they will nominate themselves as representative bodies. We would urge the Government to continue its focus on cultural change to address issues around late payment.

**2. Do you agree that representative bodies should have the flexibility to take action on behalf of members and non-members?**

With around 5.4 million businesses in the UK - 3 million of them unregistered – the reality is that large numbers will not belong to any business membership organisations, let alone those that will be signed up to act on late payments. It is right that the Government is looking at ways to ensure that these businesses (many of them sole traders) receive adequate protection from grossly unfair payment practices.

However, as with the response to Question 1, individual representative bodies will have to decide whether they will change their business models to accommodate the new flexibility. While they can fairly easily gauge how attractive such a move would be to their members, demand from non-members would be nearly impossible to estimate. If the Department for Business is considering extending the role of representative bodies to take cases on behalf of the former, it would be helpful if it could provide estimates of demand. The alternative will involve a great deal of clutching at straws.

**3. Do you have any additional comments you would like to make in relation to these draft Regulations**

If these changes were enacted, a question mark would still hover over how many individuals will want to take larger customers to court, via membership bodies or otherwise. It will do little to address worries often felt by smaller firms that they are compromising relationships and supply chains by forcing the issue. It is also a measure that again does not adequately address the central issue of late payments for smaller firms: speed of redress.

Just as with the creation of the Small Business Commissioner - which the IoD has welcomed in principle - policy makers should consider that individuals are often likely to be coming to representative bodies as a last resort. The last thing they will want is to have to jump through further layers of bureaucracy, drawing out a process that may be damaging their relationships with suppliers, as well as their broader ability to operate their business effectively.

One method of speeding up the legal process of gaining redress, as well as reducing the costs of claims would be through developing Online Dispute Resolution (ODR) for businesses with relatively small claims.

As a case in point, a 2015 report by the Civil Justice Council highlighted the potential of ODR for small civil claims of up to £25,000. With the average size of late payment to SMEs currently standing at around £32,000, it would not be a huge leap to make such a process relevant for most small to medium sized firms.

Such a system has also already proved successful for online platforms, EBay has a system in place for Online Dispute Resolution (ODR) that settles around 60 million cases per year and has already proved effective for sole traders. We therefore urge the Department for Business to work with the



Ministry of Justice to include late payment issues for small businesses in any forthcoming pilot scheme.

The Small Business Act 2015 updated the measures that can be taken by the Secretary of State in requiring firms to publish information on payment practices. At the same time, the ongoing Enterprise Bill and the creation of the Small Business Commissioner lay some decent groundwork for further help to small firms suffering from late payments.

As ever, though, there is no silver bullet and the IoD believes that cultural change and voluntary compliance with rigorous standards will go a long way towards improving the landscape for prompt payments in the UK.

Increasing the number of signatories to the Prompt Payment Code and monitoring compliance with it will be helpful to this process. Further down the line, we would also urge the Government to work with businesses in ensuring that, where possible, payment contracts between small and large firms meet the simplest possible standards. This will help address the issue of firms suffering late payment on the back of bureaucratic practices that they don't fully understand.

#### **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.**
- 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.

Thankyou for giving the IoD the opportunity to respond to this consultation and please be in touch if you have any further questions

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