

Response to Department for Business and Trade late payments consultation: tackling poor payment practices (July 2025)

October 2025

Introduction

The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).

The CLLS represents approximately 21,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients, from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.

The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to company law, contract law and corporate governance.

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General comments

In relation to the various thresholds used to determine which companies must comply with various reporting obligations, we would like to note it would be very helpful for companies to have simple tests that are easy to apply, and for the various different reporting requirements to use the same tests as far as practicable and where appropriate. Although the payment practices reporting regime uses the Companies Act 2006 thresholds, the thresholds in relation to other non-financial reporting obligations are not so aligned.

We feel that regular changes to The Reporting on Payment Practices and Performance Regulations 2017 and the payment practices regime more generally are unhelpful to businesses. It is therefore important that any changes will have a significant positive impact on the issue of late payments.

Measure 1 – audit committees and board-level scrutiny of large company payment practices

Q9a. 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 / somewhat agree / neither / **somewhat disagree** / strongly disagree]

The Regulations

We note that the draft Companies (Directors' Report) (Payment Reporting) Regulations 2025 ("**Regulations**") require large companies to include their payment performance within their annual reports. As we noted in our April 2023 [response](#) to the consultation on the Reporting on Payment Practices and Performance Regulations 2017, we continue to believe that companies should have

flexibility in how they present the required reporting summary. The content of this summary could be addressed through the guidance we understand the government plans to publish on the Regulations, or potentially the UK Corporate Governance Code and Wates Corporate Governance Principles for Large Private Companies (the "**Wates Principles**") – if the government wishes to ensure consistency.

We also understand that the government guidance will put beyond doubt that the Regulations are not intended to bring overseas subsidiary undertakings of UK companies in scope of payment practices reporting, when the UK company is required to prepare a group directors' report (given that overseas subsidiary undertakings of UK companies are not in scope of the existing requirements).

It would also be helpful if the government guidance can clarify that the Regulations do not broaden the scope of companies subject to the payment practices reporting regime (for example, companies that have never had to report because they fall below the necessary thresholds but which are excluded from being treated as medium-sized by virtue of s. 467 Companies Act 2006).

We note that the footnote to paragraph 29 of the Regulations refers to the medium-sized company thresholds in section 465(2) but is silent on section 467. This suggests that requirement to report is solely determined by whether a company exceeds the relevant thresholds. This would also be consistent with the 2017 Regulations. That said, section 467 is broadly drafted and excludes certain types of company from taking advantage of the provisions of Part 15 Companies Act 2006 relating to companies qualifying as medium-sized. The draft Regulations are to be made pursuant to section 416(4) which is in Part 15, so it is not clear whether such companies are caught by section 467.

We are not convinced that the publication by companies of details of their payment practices in their annual report will increase visibility of the data among their suppliers. If smaller businesses are not using the government portal to assess the payment practices of potential customers, they are unlikely to seek out this information within a lengthy directors' report within an annual report. It is also worth noting that the information published as part of the annual report will be more out-of-date by the time it is published, compared to information published on the government portal, particularly if the current requirement to report on a six-monthly basis is removed. Moreover, where information is required to be presented on a consolidated group basis in an annual report, it is significantly less relevant to a small supplier looking for information about a specific company.

It is unclear how these new regulations align with the ongoing non-financial reporting review seeking to streamline and simplify company reporting in the UK.

There is also a lack of clarity regarding the role of the Small Business Commissioner (SBC) in regulating the payment practices section within the annual report.

Audit committees

We do not support legislation requiring audit committees (where they exist) to provide commentary and make recommendations to directors in relation to payment practices reporting. In our view, if the requirement for a reporting business to include information on its payment practices and performance in its directors' report is introduced, this will be sufficient at this stage. This approach ensures that all the directors engage with the issue, thereby increasing internal scrutiny of the data and reporting. If this fuller board-level scrutiny does not increase confidence in the data, further verification or assurance measures could be considered but we do not believe that such steps are necessary or proportionate at this stage.

In the meantime, if a company wishes its audit committee to address payment practices, it may specify as such in the committee's terms of reference. If it is felt that the involvement of an audit committee needs to be emphasised, existing corporate governance codes – including the UK Corporate Governance Code and Wates Principles – could be updated to include a specific provision to this effect. This would allow a company with an audit committee to submit its payment practices to its audit committee for review or else explain why it has chosen not to do so (e.g. because it feels its board has already been provided with sufficient information).

Q9b. To what extent do you agree that the Small Business Commissioner should write to audit committees and company boards, where companies have them, when undertaking payment performance reporting assurance and when investigating any other matter relating to a company's payment practices?

[Strongly agree / somewhat agree / **neither** / somewhat disagree / strongly disagree]

We believe that the SBC is best placed to determine the steps that it should take in relation to payment practices and do not consider it appropriate to mandate this course of action.

However, if the SBC issues a letter to a board of directors regarding poor payment practices, we suggest that the SBC should be required to note that fact against the relevant company on the government portal.

Q9c. Are there any potential unintended consequences or considerations that could happen if this measure was introduced?

N/A

Q9d. Explain the reasons for your answer to question 9c.

N/A

Measure 2 – maximum payment terms

Q10a. 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 / **somewhat agree** / neither / somewhat disagree / strongly disagree]

Q10b. Explain the reasons for your answer to question 10a.

We appreciate that capping UK payment terms at a maximum of 60 days could help address the imbalance in bargaining power between smaller suppliers and large companies – provided that robust anti-avoidance measures are implemented. However, we do not believe that a similar restriction, which limits contractual freedom, is necessary for contractual relations between a large business and a large company, where bargaining power and financial resources will be more even and where the parties are more likely to be able to benefit from professional advice.

The law of England and Wales has long been respected for its flexibility in allowing contract parties to decide how to regulate their affairs. Imposing restrictions as between large businesses may make England and Wales less attractive as the governing law for contracts and, in turn, impact the UK's international competitiveness. There is a further potential risk that large companies may select foreign suppliers (if available) over a UK-based supplier with more restrictive payment terms.

We recognise that, to limit the new restriction so that it applies only between smaller suppliers and large companies, it may be necessary to introduce a mechanism to determine whether a supplier is "smaller". There could be various ways to achieve this, including by requiring a supplier to self-declare its status based on its previous year's accounts.

If the measure is pursued, it should not apply to contracts between group companies, or companies under common control, who should be able to regulate their affairs as they wish.

Q10c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

See answer to next question.

Q10d. Explain the reasons for your answer to question 10c.

The effectiveness of the proposal hinges on the consequences imposed when a large company fails to make payment within the specified period. This should not rely on the small business needing to initiate legal proceedings. Instead, the SBC should be empowered to impose substantial fines or issue binding payment orders, with non-compliance treated as a criminal offence.

If, as we suggest, the new restriction is applied only between smaller suppliers and large companies, there is a risk that large companies may seek to avoid the restriction by using large suppliers of similar products to the detriment of SMEs.

See also our answer to Question 10b on the attractiveness / competitiveness on the UK as a market.

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

As outlined in our answer to Question 10b, if the new restriction is pursued it should not apply to contracts between large businesses or companies under common control. A fulsome further consultation may be needed to consider all of the various types of contracts that should be excluded.

We assume that as the existing regime does not apply to financial services contracts, they will also be excluded from the new restriction – it would not be appropriate for financial services contracts. We would also suggest that contracts for the sale, lease or licence of (among others) securities, real estate and intellectual property be excluded (because for example deferred, staggered or contingent consideration is common in those types of contracts). Additionally, other categories of complex, long-term contracts – such as those involving bespoke manufacturing, R&D or construction – may also warrant tailored exemptions, given the potential mismatch between delivery timelines and payment readiness.

The consultation contemplates introducing this restriction by amendment to the Late Payment of Commercial Debts (Interest) Act 1998 (the "**Act**"). We assume therefore that the restriction will apply only to contracts within the scope of the Act and, in particular, will not apply to contracts where one party is not acting in the course of a business (see section 2(1) of the Act), contracts of service or apprenticeship (see section 2(4) of the Act) or contracts that are "excepted contracts" under the Act (see section 2(5) of the Act).

Measure 3 – a deadline for disputing invoices

Q11a. 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 / somewhat agree / ☐ neither / somewhat disagree / strongly disagree]

Q11b. Explain the reasons for your answer to 11a.

Introducing a protective disputes period could offer small businesses greater certainty about the amount they will receive, even if it does not entirely eliminate late payments. There is a risk that payers may raise disputes as they approach the 30-day payment deadline, potentially undermining the intent of timely payment. It may help to deter larger companies from raising spurious objections by imposing a requirement to act in good faith and by requiring a dispute to contain certain minimum information.

It is also important to consider how efficiently large companies process invoices – particularly where automation is involved – and ensure that any dispute mechanism is aligned with the agreed payment terms. (Many large companies process hundreds, perhaps thousands, of invoices on a monthly or other regular basis through automated systems and may need to make significant adjustments to those systems (which may incur significant cost) to be able to comply with the proposed new restrictions.)

This would also be another example of limiting contractual freedom, again potentially impacting the attractiveness and competitiveness of the UK as a market.

Q11c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

N/A

Q11d. Explain the reasons for your answer to question 11c.

N/A

Q11e. Are there more effective ways the government could prevent frivolous disputing of invoices?

N/A

Measure 4 – mandatory statutory interest

Q12a. 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q12b. Explain the reasons for your answer to question 12a.

The Act already provides some restriction on interest rates. Under the Act, any contractual terms that purport to exclude or vary the right to statutory interest on debts incurred under the contract are void unless the contract provides a substantial remedy for late payment. Section 9(1)(a) of the Act requires a "substantial contractual remedy" to be sufficient for the purpose of "compensating the supplier for late payment or for deterring late payment". It is not clear the extent to which small suppliers would be willing or able to litigate this point.

Making the statutory interest rate mandatory in contracts between small suppliers and large companies would help eliminate ambiguity about what constitutes a substantial remedy under the Act.

However, we do not support applying a mandatory statutory interest rate to contracts between large businesses and large companies. In such cases, freedom of contract should be preserved subject only to the Act's requirement for a "substantial remedy". The definition of "qualifying contract" will therefore need to be carefully considered.

Q12c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

N/A

Q12d. Explain the reasons for your answer to question 12c.

N/A

Measure 5 – additional reporting on statutory interest

Q13a. 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 / somewhat agree / **neither** / somewhat disagree / strongly disagree]

Q13b. Explain the reasons for your answer to question 13a.

We are not convinced that such a requirement would add anything to the metrics which are already required. It seems to require considerable effort for minimal practical impact.

Q13c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

N/A

Q13d. Explain the reasons for your answer to question 13c.

N/A

Measure 6 – financial penalties for persistent late payers

Q14a. 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 / **somewhat agree** / neither / somewhat disagree / strongly disagree]

Q14b. Explain the reasons for your answer to question 14a.

A financial penalty regime may be the only effective means of addressing persistent late payment issues. However, any such regime would need to be carefully designed, with clear and well-defined trigger points, possibly incorporating a ratchet mechanism to escalate penalties for

repeated or prolonged non-compliance. It would also need to be consistently applied to ensure fairness and credibility.

Any penalties collected could be used to fund advisory support for small businesses.

Q14c. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

N/A

Q14d. Explain the reasons for your answer to question 14c.

N/A

Q14e. 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

N/A

Q14f. Explain the reasons for your answer to question 14e.

N/A

Measure 7 – additional powers for the Small Business Commissioner, including assurance of payment reporting data

Q15a. 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

Q15b. Explain the reasons for your answer to question 15a.

The powers of the SBC should be used both to raise awareness of the impact of late payment and to take action against late payers. In our view, small suppliers are often reluctant to litigate late payments which presents an opportunity for the SBC to offer practical support. Any SBC process for resolving disputes around late payments must be efficient and streamlined to provide a more accessible and effective alternative to court proceedings.

As previously mentioned, if the SBC sends a letter to a board of directors regarding poor payment practices, we recommend that there be a requirement for SBC to note that fact on the government portal.

Additionally, there must be a clear division of responsibilities between the SBC and the FRC in relation to any new reporting requirements.

Q15c. 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 / somewhat agree / neither / somewhat disagree / strongly disagree]

N/A

Q15d. Explain the reasons for your answer to question 15c.

N/A

Q15e. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of this measure?

N/A

Q15f. Explain the reasons for your answer to question Q15e.

N/A

Other changes to payment performance reporting

Q16a. 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 agree / somewhat agree / neither / somewhat disagree / strongly disagree]

Q16b. Explain the reasons for your answer to question 16a.

The reporting requirements must align with the new requirement to include payment practices reporting in the annual report. We suggest that the timeframe for publication of annual data on the government portal be extended to align with the deadlines under the Companies Act 2006 for filing annual reports with the Registrar of Companies.

As outlined in our response to Question 9a, this will mean that the available information about a company's payment practices will be more dated than is currently the case.

Measure 8 – use of retention clauses in construction contracts

Q17a. 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 / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

N/A

Q17b. Explain the reasons for your answer to question 17a.

This would also be another example of limiting contractual freedom, again potentially impacting the attractiveness and competitiveness of the UK as a market.

Q18. 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? Explain the reasons for your answer.

N/A

Q19. What length of transitional period would be required for a payer to adjust to the ban measure? Explain the reasons for your answer.

N/A

Q20. 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.

N/A

Q21a. 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 / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

N/A

Q21b. Explain the reasons for your answer to question 21a.

N/A

Q22a. What would be the preferred mechanism of a payer to protect the retention sums?

[Segregated bank account / instrument of guarantee / mixture of both]

N/A

Q22b. Explain the reasons for your answer to question 22a.

N/A

Q23. What length of transitional period would be required for a payer to adjust to the retention protection measure? Explain the reasons for your answer.

N/A

Q24a. To what extent do you agree with the proposed features of the retention protection measure?

[Strongly agree / somewhat agree / neither agree or disagree / somewhat disagree / strongly disagree]

N/A

Q24b. 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.

N/A

Q25. 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.

N/A

The next 2 questions apply to both options for the use of retention clauses in construction contracts.

Q26. Are there any potential unintended consequences or considerations that should be taken into account for the introduction of either proposed measure for the use of retention clauses in construction contracts? Explain the reasons for your answer.

N/A

Q27. Do you have any further comments on either proposed measure for the use of retention clauses in construction contracts?

N/A

Miscellaneous

Q28. Do you have any further comments on any elements of the proposals that might aid the consultation process as a whole?

As noted in our responses to the questions above, we are concerned that imposing broad restrictions could adversely affect the attractiveness of the law of England and Wales as the governing law of contracts, with implications for the competitiveness of the UK market as a whole.