Association of Accounting Technicians (AAT) response to the Department for Business, Energy & Industrial Strategy, Statutory Review of The Reporting on Payment Practices and Performance Regulations

AAT has offered constructive criticism of the Payment Practices and Performance Regulations since inception, believing them to be a well-intentioned but wholly misguided and ineffective policy response to the multi-billion pound problem of late payments. AAT notes the restrictive and leading manner of many of the review questions which appear designed to provide BEIS with the answers it requires rather than any genuinely helpful information that could contribute to tackling this immensely serious and ill addressed problem.

AAT reports its payment practices under the regulations despite not being obliged to do so as it does not meet the essential qualifying criteria. It does so because, like many others, it wishes to demonstrate to suppliers, customers, prospective customers, its own employees, members and other stakeholders that it is committed to prompt payment. This is also our reasoning behind being a long standing signatory to the Prompt Payment Code.

To what extent do you agree that the Regulations have brought greater transparency on payment practices and performance?

Superficially it may be difficult to argue that any form of reporting requirement does not provide greater transparency irrespective of their overall effectiveness, given that is the nature of a reporting requirement.

However, with regard to these regulations, there is much to suggest otherwise.

Firstly, transparency is greatly undermined by the fact there is such a significant issue with many companies who should be reporting their payment practices purposefully failing to do so[1]. There is a related issue around the reliability of the data. If the objective is to encourage small businesses to establish if they are working with a company that pays on time and/or in a reasonable timeframe, it is essential that such data is accurate and can be relied upon.

Secondly, BEIS does not publish any statistics as to how many of the UK's 5 million+ SMEs access the portal for information. Given the reluctance to make such information publicly available it is reasonable to assume that information is rarely being accessed by the intended audience.

As AAT stated in 2018[2], the regulations provide policy makers with reams of additional information. However, in terms of transparency that benefits the majority of small businesses, it does not appear to have made any difference. Small business suppliers are not making informed decisions about who to trade with, negotiate fairer terms, and challenge late payments as a result of the regulations as most do not access the data, with many being unaware it even exists.

Furthermore, the problem of late payments has grown rather than decreased since the introduction of these regulations. This was already the case prior to the pandemic[3], although the pandemic has clearly exacerbated the problem.[4]

To what extent do you agree that the Regulations have helped overcome the asymmetry of information regarding payment practices and performance between large businesses and their suppliers?

The regulations undoubtedly provide more information and could arguably improve the asymmetry of information regarding payment practices but as highlighted above, small businesses rarely access the information and even if they did, the provision of such information is largely useless when considering the asymmetry of bargaining power, size and importance. If a large company is the only option or forms the main bulk of a small companies' sales, then there is virtually no chance of the small supplier taking their business elsewhere because of an awareness of poor payment practices. The suggestion that the asymmetry of information is, or ever has been, a key reason for late payment is far from credible.

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[1] **Construction News, December 2021:**
https://www.constructionnews.co.uk/financial/revealed-one-in-six-contractors-not-publishing-payment-data-10-12-2021/
[2] **AAT submission to BEIS Call for Evidence on Creating a Responsible Payment Culture, 2018:**
https://www.aat.org.uk/prod/s3fs-public/assets/AAT-response-BEIS-Creating-responsible-payment-culture-call-for-evidence.PDF
[3] **Close Finance Data Hub:**
https://www.closeassetfinance.co.uk/sme-data-hub
[4] **Guardian, 2022:**
https://www.theguardian.com/business/2022/jan/03/uks-late-payment-crisis-risks-future-of-440000-small-firms

To what extent do you agree that the Regulations have helped businesses better understand what to expect from their customers?

AAT does not believe that the Regulations have made any discernible difference as to what to expect from their customers as there is no evidence to substantiate such a claim.

To what extent do you agree that the Regulations have provided incentives on businesses to improve payment practices?

As AAT warned many years ago, these regulations do not appear to offer any real incentive for businesses to improve their payment practices as no action is taken against any company reporting poor payment practice.

There is no consequence of poor reporting and as such most companies have continued as before. Those that paid on time continue to do so and those that did not, continue not to.

As AAT has warned from the outset, expecting a transformation of payment culture simply from imposing reporting requirements, without any form of sanction or consequence was wholly unrealistic.

To what extent do you agree that the Regulations have made it easier for business representative bodies, suppliers, and other businesses to identify late paying businesses and put commercial and reputational pressure on these businesses to pay promptly?

Again, Government has grossly overestimated big business concerns about reputational damage from payment practices in the same way that most of the very largest businesses in the UK have virtually zero concern over reputational damage from exorbitant executive pay. Self-interest and shareholder interests trump any short lived media focus on a company's payment practices as was amply demonstrated by the performance of several FTSE 100 companies during the pandemic[5]. If it suits big business to have excessively long payment terms or to fail to pay, even within such excessively long payment terms, then given the lack of any meaningful consequence and the financial benefits from a cash flow perspective, it is no surprise that reporting information to an obscure database, rarely used by suppliers and only occasionally referenced in the media, is not delivering the slightest change in payment practices, let alone the culture change required.

Do you think there have been any unintended effects of the Regulations?

Yes. Considerable additional bureaucracy requiring companies to invest time and resources into reporting that is largely unused by suppliers and could easily be avoided if Government were simply to legislate for 30 day maximum payment terms.

Like requirements for disclosures on payment practices being made within company annual reports, the regulations create a considerable degree of additional work for very little return. As AAT stated in its 2018 submission to BEIS, "*the constant stream of failed tweaks, voluntarism and reliance on employers*" is not working[6]. Nothing that has occurred since then has changed this view.

Do you think the Regulations should remain in effect?

No. AAT does not believe the regulations should remain in effect for the reasons clearly set out in its 2018 response to your Call for Evidence, "Creating a responsible payment culture" which highlighted, that the regulations would make only a very limited difference at best;

> *"Payment practice reporting provides useful data for policy makers but has no discernible value in terms of changing behaviour. It is also worth noting that whilst there is a legal obligation to report the data, there is no legal action if that data provides great cause for concern i.e. theoretically if only 1% of all invoices are paid within agreed terms (irrespective of length) then no action whatsoever will be taken against that company. This point was far from uniquely demonstrated by Grainer & Worrall Engineering who paid suppliers within agreed payment terms in just 4% of cases for the six months from June to December 2017.[7]"*

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5 Cash-strapped FTSE 100 companies delay payments to suppliers during Covid crisis, Investors Chronicle, 2021: https://www.investorschronicle.co.uk/news/2021/03/24/cash-strapped-ftse-100-companies-delay-payments-to-suppliers-during-covid-crisis/

[6] **AAT submission to BEIS Call for Evidence on Creating a Responsible Payment Culture, 2018: https://www.aat.org.uk/prod/s3fs-public/assets/AAT-response-BEIS-Creating-responsible-payment-culture-call-for-evidence.PDF**

[7] **Ibid**

Four years later and a quick check of the BEIS database reveals that numerous companies continue to pay the vast majority of their suppliers outside agreed payment terms. For example, Parts Alliance Group, W& J Linney Ltd., TNT Express ICS Ltd, Boughey Distribution Ltd and countless others have all failed to pay 90% or more of their suppliers within agreed timescales[8]. Likewise, Pontrillas Sawmills Ltd[9], APP Wholesale[10] and various others have failed to pay 99% of their suppliers within agreed timescales and there are several such as Randstad Middle East Ltd[11] and KCA Technical Support Ltd[12] who have failed to pay 100% of their invoices within agreed timescales over a six month period – all of these examples were pre-pandemic so cannot claim the effects of Covid-19 are in any way to blame. Not only are these failures appalling given the impact they have on many SMEs, but it is compounded by the fact that even timescales that had been agreed (and ignored) are excessively long in many cases.

As BEIS data shows that most companies can and do pay their suppliers within 30 days, that 30 days has now been accepted as the maximum payment term under the Prompt Payment Code and that in a modern economy it is widely accepted that 30 days is a reasonable timeframe for payment to be made, AAT again strongly recommends that Government should legislate for all companies to pay 95% of their suppliers within 30 days.

There is widespread support for such a move from the business community and even from policymakers given YouGov polling commissioned by AAT and published in January 2019 showed that 73% of MPs back the idea of a 30 day maximum payment term.

Civil servants frequently cite the poor example of France as being the key reason why the UK would never legislate for maximum payment terms. However, this fundamentally fails to understand the reasons behind the poor performance of such legislation in France. The main weakness in France is not the existence of a maximum payment term but a lack of clarity around terms that vary depending on the nature of the relationship and a maximum payment term/s that remain far too long. For example, in France there is a maximum of 45 days for periodic invoices, 60 days for construction industry invoices and 90 days for those exporting outside the EU (as well as some other variations). A single maximum is required to avoid confusion and unnecessary complexity and one that is not too long is essential to guarantee success. 30 days would meet this criteria.

Further information

If you have any queries, require any further information, or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy:

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Phil Hall, 3 February 2022

[8] **BEIS Export data for published payment practices reports:**
https://check-payment-practices.service.gov.uk/export?_ga=2.191077418.1473077963.1642717321-751946102.1639475208
[9] **Pontrillas Sawmills payment practices:**
https://check-payment-practices.service.gov.uk/report/24450
[10] **APP Wholesale payment practices:**
https://check-payment-practices.service.gov.uk/report/25504
[11] **Randstad Middle East Ltd payment practices:**
https://check-payment-practices.service.gov.uk/report/3882
[12] **KCA Technical Support payment practices:**
https://check-payment-practices.service.gov.uk/report/3399