Responsible Payment Culture CFE

Department for Business, Energy & Industrial Strategy

1st Floor, Orchard 3, 1 Victoria Street

London SW1H 0ET

By e-mail to responsiblepaymentculture@beis.gov.uk 28th November 2018

**Dear Sir/Madam**

**Genesis Initiative Response to the BEIS consultation - Creating a Responsible Payment Culture**

The Genesis Initiative (Genesis) represents, through the 115 trade and professional associations forming the Genesis Senate, over 1 million small businesses and self-employed, <https://www.genesis-initiative.org/> . Genesis was formed to improve the quality of the debate on SMEs and to create economic reform, it is cross-party, driven by SMEs and supported by Parliamentarians and academics.

This Genesis response takes the form of direct answers to the questions posed and these are annexed to this letter. The response was initiated through the Genesis Senate at its September 2018 meeting and then finalised by a delegated working party.

Genesis emphasises the following central points in its response:

* BEIS should focus on introducing e-invoicing technology and make it the Code of Practice standard, to move towards most payment being virtually instantaneous.
* There should be a clear definition of unfair payment terms, using the Irish Republic’s approach and adopting 30-day payment term as the legal norm, on a comply or explain basis.
* The SME Commissioner should be empowered, and the current advisory approach to individual cases should become an enforcement based one, where the Commissioner could work in partnership with business associations through simple employment tribunal-like structures to secure rapid adjudication.

Yours faithfully



**DAVID HARVEY – CONSULTANT CHIEF EXECUTIVE**

**Response from the Genesis Initiative – Creating a Responsible Payment**

**BEIS Questions (in green) and Genesis responses (in black)**

Please tick the box which best describes most of your organisation’s business to business transactions

* Supplier of goods/services
* Buyer of goods/services
* Buyer and Supplier
* Other (please describe)

**Other** – The Genesis Initiative represents 115 trade associations and representative bodies in the SME/self-employed sector, with over a million businesses and self-employed members, together with associated academics and experts. Thus, the membership includes businesses in all the above categories, together with academics and with politicians on a cross-party basis.

**Please answer the following questions thinking about when you supply to other businesses:**

1 a. What percentage of payments from businesses and organisations that you supply to are late?

• 0%

• Up to 25º/o

• 26-50%

• 51-75%

• 76%-99%

• 100%

Overall, Genesis member organisation observed that circa 25% of businesses which their members supply are late payers; this headline figure hides variations by sector and frequency but is a reasonable average. What is certain is that late payment remains a business killer. It has extremely negative social impacts, as well as economic ones. Intrum set out in their European Payment Report 2018 that 2.18% of UK sales revenues continue to be lost to late payment. Since profit is often made in the last 5% to 10% of turnover, late payment remains a significant threat. The Intrum report also points out that almost ¼ of UK businesses believe that late payment is a threat to their survival, the highest level in Europe where the norm is around 10% of businesses.

Amongst Genesis members there were examples of significantly later payment periods than the UK average of 27 days. Observations from Genesis members suggest that perhaps as many as 30% of businesses encounter what they believe to be unnecessarily long payment terms.

1 b. How has the proportion of payments made late changed over the past 3 years?

• Increased

• Decreased

• No change

Genesis organisations had not particularly observed a change. However, it was noted that the consultation suggests that the quantum of late payment outstanding overall has fallen by some 50% in recent years. It would be relevant to the analysis to understand this in more detail. A vanilla reduction of 50% is a positive narrative. However, were this reduction to be primarily in routine late payments, say 40 days rather than 30; whilst critical late payment threatening business survival remained high, with the draw very different conclusions about the U.K.’s late payment culture.

There was a discussion about late payment by the public sector, it was inconclusive. There was a feeling that some organisations had improved their practices significantly, but others have not. There was concern that the NHS remains a late payer. The Intrum research suggests a small drop of around 10% in the proportion of late payment by suppliers adopting that practice as a matter of deliberate cash management policy. There was a Genesis consensus that this improvement appeared to be the case.

1 c. Do you research the payment performance of a business before entering in to an agreement with them? Please detail how you research this.

• Yes

• No

• Please expand on your answer

Yes; associations report that most of their members do some research. For instance looking for credit references for substantial contracts and as part of the development of strategic relationships is becoming more popular. However, for new clients, assurance can be difficult and business circumstances change, sometimes rapidly. For occasional purchases, there is a de minimis when it is seen not worth entering a detailed process of a new customer. It was suggested that several credit referencing services, required service users to disclose their suppliers before being given access to credit information about customers. SMEs were felt to be reluctant to do this.

1 d. What, if any, action do you take when you are paid late? (Select all that apply)

• I do nothing/wait to be paid

• I contact the business who is late paying

• I calculate statutory interest and debt costs and re-invoice the late paying business

• I contact my trade/sector body

• I contact the Small Business Commissioner

• Other (Please expand)

Most businesses contact the late payer, but we think that well under 10% re-invoice adding statutory interest, compensation charges and other debt-related costs et cetera. Very few contact the Commissioner, whose role is not yet widely understood, and which is not felt to be substantially resourced. Some do use their trade association networks to exercise leverage formally or informally e.g. in construction sector.

1 e. How often do you experience Invoices that are never paid?

All the trade associations involved in the Genesis Senate meeting where the questionnaire was tabled have members who encountered invoices that were never paid. Whilst this is rare, business failure and very occasional fraud are factors when such matters arise, as are trade disputes over the nature or condition/quality of goods. Intrum Justicia suggest that 2.18% of UK sales invoices in the private sector were not paid last year.

Genesis Senate members were concerned about the abuse of company rescue mechanisms such as prepack company reconstructions to evade legitimate trade debts. It is certainly the perception of the SME sector that not every company recovery professional takes an even-handed look when considering when to embark down the reconstruction road that will lead to a company not paying its debts. Most associations have members who had needed to write off money owing by suppliers, only to see the same business re-emerging as a Phoenix company. The Genesis working party noted the corporate recovery procedure in Belgium, where if the business is viable, preferential creditors can be removed and replaced by suppliers to ensure continuity of effective business relationships for the reconstructed business.

**Please answer the following questions thinking about when you supply to other businesses:**

 2a. On average, what is the typical payment term offered by businesses you supply to?

• Partial or full payment in advance

• Payment in full on delivery

• Payment within 1 O days

• Payment within 11-30 days

• Payment within 31-60 days

• Payment within 61-90 days

• Payment after 90 days

• Other, please specify

Across all the sectors represented within Genesis, 30 days from invoice is the nearest to standard practice. Some businesses with powerful customers find themselves with much longer payment periods effectively forced on them or find that invoices are only accepted sometime after delivery making 30 days into 50 or 60. The EU directive approach whereby the clock starts to take that the later of the delivery of the service or the invoice is a clear starting point and should be the norm. Businesses in a more powerful relationship with their customers are often able to look for full or partial payment in advance. Some SMEs in the professional services sector have found, particularly when dealing with members of the public and sole traders, that upfront payment is sensible and that the request is understood by the other party and not seen as unreasonable.

2b. How have the length of these terms changed over the past 3 years?

• Increased

• Decreased

• No change

In the last three years there is felt to have been little change. The last period of significant changes in the payment period was after the financial crisis when, for instance in the financial services sector, cash flow was used to manage business pressure. Longer payment periods have reduced as business has stabilised. As noted above, whilst not doubting the BEIS statement that the overall quantum of late payment may have diminished significantly in the last three years, it would be helpful to dig further into that statistic to understand what it really means.

2c. Do you feel able to negotiate and/or challenge payment terms?

• Yes

• No

• Please expand on your answer

Yes - Relationships of equality allow negotiation, powerful customers can often set their own terms, this is a power relationship. As noted below, clear definitions of unfair practices would secure a better balance of power for SMEs dealing with those powerful customers.

**Please answer the following questions thinking about when you buy from other businesses:**

3a. On average what is the typical payment term you offer your suppliers?

• Partial or full payment in advance

• Payment in full on delivery

• Payment within 10 days

• Payment within 11-30 days

• Payment within 31-60 days

• Payment within 61-90 days

• Payment after 90 days

• Other, please specify

Most businesses in Genesis organisations set out that they operate on a “do as you would be done by“ basis. As the consultation paper shows, 27 to 30 days payment terms is normal; it is the extremes of practice we should worry about. Research by The Association of Business Recovery Professionals shows, similarly to Intrum Justicia, that from region to region up to ¼ of businesses may have concerns about survival year-on-year through late payment by suppliers. Clearly, whatever most businesses do, a minority either face debt problems themselves or abuse the system to pay late.

3b. How have the length of these terms changed over the past 3 years?

• Increased

• Decreased

• No change

No change – as noted above, this is their perception and what it really means in terms of day-to-day practice and the payment of late payers or late paying businesses is harder to ascertain.

4a. What do you think are the reasons for long payment terms?

• Complex invoicing procedures

• Nature of goods/service

• Imbalance of power between business

• Competitive advantage

• Other (please specify)

Complex invoicing procedures can be reasons for long payment periods, especially when complex supply chains are involved. However, the balance of power and competitive advantage issues are more significant for setting long payment terms. Relatively simple technology, with three-way matching of invoices happening almost instantaneously should remove many reasons for late payment and indeed bring down the average payment time significantly.

4b. How have long payment periods affected you? (Select all that apply)

• We pay our own suppliers late

• We struggle to pay our staff on time

• We struggle to pay business bills like energy, business rates and rent

• We must rely on invoice financing

• We must rely on our bank overdraft

• We must take out loans to cover shortfalls

• We have been unable to invest in new equipment/and or staff

• Our staff have had to reduce their salaries

• Other (please specify)

Genesis organisations pointed to all the above as being impacts of long or late payment. Reference was made to the prevention of growth. Internally generated cash flow will not be directed towards new activity or new assets when late payment could hit that available cash flow hard. All organisations knew of businesses that had failed or been forced to restructure or be sold because of pressures imposed by long payment terms, often followed by late payment; it is not infrequent that the two go arm in arm. This was generally because long payment and late payment are used as cash flow management for reasons from business insecurity, to the nature of the business, to simple greed and bad practice. Sometimes late payment is simply policy since taxes are paid then wages; suppliers are paid last. It is not that late payment or long payment is a constant negative for a significant or even a large part of the SME community, but that it is too often seen as a possibility that impedes long-term planning. It also has a highly negative effect on the prospects or even the survival of more than enough businesses for it to matter in the UK economy and damages GDP. The list above of the impacts of long payment omits the impact on health and on the private lives of business owners and employees and can be both physical and mental and should not be underestimated.

5. Do you use technology to manage the payment process? How has it helped?

• Yes

• No

• Please expand on your answer

Several organisations reported their members using electronic invoicing and payment, which they believed speeded payment. Block chain type technologies which can make payment of accepted electronic invoices almost instantaneous, are seen by some as a significant tool that could drive a culture of prompt payment. This is particularly so when there are complex sub-contractor relationships. Large businesses, by sector, would need to lead and make that first commitment to proceed by e-commerce. Were the major supermarkets to commit to paying their suppliers by the rapid payment of the invoices, they would be major drivers of positive cultural change. Late payment can be driven by an “everyone does it” culture, when what is needed is a “no one does it culture”. The public sector, particularly major components such as the NHS and local councils could also make this e-commerce commitment.

The EU public procurement directive endorses e-invoicing in public procurement. Italy and Finland had we understood made most progress. These practices are to be encouraged.

6. Do you think that newly introduced measures, namely the Small Business

Commissioner and payment practices reporting, will affect the culture of payment

practices? How could these be enhanced to further promote a best practice payment culture?

• Yes

• No

• Don’t know

• Please expand on your answer

**The Commissioner**

There is a wide feeling that the Small Business Commissioner is yet unproven. This does not relate to the individual but to the powers of their office and the resources behind them. The Commissioner will need to highlight company-specific late and long payment practices and have more material powers to act on these. The assumption should be that late payers not paying within 30 days should comply or explain; the 60-day presumption is much too long a period. The Commissioner’s powers to mediate disputes through the small business complaints scheme need enforcement powers; the Commissioner should be able to enforce decisions on a statutory basis, probably through a simple adjudication procedure, which might be not unlike an employment tribunal.

**Payment Reporting**

Genesis organisations have commented negatively on the payment reporting website. They have found it to be difficult to use with inconsistent numbers of businesses registered and submissions made, and data presented in an unintelligible fashion and in disorder. The website requires urgent attention and to be populated in a way such that it could be easily and helpfully accessed by an SME needing the resource. The Genesis working party looked at analysis of the latest Payment Practices reports from large corporates, at <https://check-payment-practices.service.gov.uk/export> According to the data, 61% of the companies on the list (6,334 returns) report average days to pay of over 30 days. The spreadsheet contains nil returns and duplications, and requires much sorting for use results are only as good as the data provided

The criteria for compulsory payment reporting - any two of £36 million annual turnover, £18 million balance sheet total and 250 employees - are too high. All businesses not defined as small should be included in the requirement. Merely including PLCs, LLPs and large companies misses out significant elements of the supply chain which can be a major part of the late payment problem.

Thus, payment practice reporting should be extended to the public sector, which should face the same obligations as private business. Were the public sector payment practices of the Irish government to be introduced to the UK, with 15-day statutory payment of invoices and quarterly reporting of payment, Genesis believes that this would promote a significant further change in payment culture. We suspect that some public sector organisations will be reluctant to disclose, and some Genesis organisations said they will be willing to back FOI requests against particular late/long payment culprits.

Payment practices reporting could be usefully expanded. Companies should report on the amounts of interest and compensation that had to be paid if suppliers enforced all their contract terms, including interest and all other costs such as the creditor’s cost of borrowing. Since SMEs seldom feel able to enforce, late payment is often hidden by understandable reluctance to act and enforce. This way the onus to disclose is placed on customer businesses.

7. Do you think that the legal definition of when a payment term is considered to be ‘grossly unfair’ to the supplier is clear?

• Yes

• No

• Don’t know

• Please expand on your answer

As the government’s consultation on unfair payment terms suggested, Genesis believes that much could be gained by copying the Irish example, thus on that basis the following should be considered when deciding if terms are grossly unfair:

* first, the strength of the bargaining positions of the supplier and purchaser;
* good commercial practice;
* nature of the goods or services concerned;
* whether the purchaser had any objective reason to deviate from the Regulations;
* whether the supplier received an inducement to agree to the term;
* whether the supplier knew (or ought to have known) of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties); and
* the extent of the term.

While the common law precedent needs to be built up, the above criteria would help shape those precedents. Government should make 30 days the default maximum payment, on a comply or explain basis. Were this so, a significant balance of power redistribution towards SMEs would benefit the economy, freeing finance for investment and building confidence. The original intention of the legislation in 1998 was a 30 days default period.

Presently, the situation where penalties and compensation do not generally come into effect until a late payment claim is submitted, lets late payers of the hook. Penalties and compensation should potentially come into effect from the moment a payment becomes late and should be shown in the accounts.

8. Do you think any specific changes or measures could be introduced to make it easier for suppliers to charge interest when they are paid beyond agreed terms?

Empowering the Commissioner to penalise customers identified as paying beyond agreed terms with a simple adjudication process would speed up the process and remove the need to go to court making redress easier. However, SMEs are always concerned about losing business if they are on the smaller side of a power relationship with a customer. Thus, simplified process is only part of the answer. The Commissioner should be empowered to mount enquires and to penalise where a customer abuses payment terms and practices.

Articles 4 and five of the draft EU Unfair Payment Terms Directive with its focus on the food sector, sets out an example of useful ways in which sector focused improvement could be made to shape payment regimes and make it easier for suppliers to charge interest and compensation charges going forward.

It would be reasonable to expand the definition of reasonable compensation from a debtor, to include other expenses incurred, inter alia, in instructing a lawyer or employing the debt collecting agency. In case of doubt, costs such as lawyers or accountants letters should also be clearly included.

9. Are additional measures needed to give confidence in the Prompt Payment Code as a statement of good practice?

• Yes

• No

• Please expand on your answer

Yes

Recognition should be given to prompt payers by the Code; with a kite mark and publicity. The Code should particularly endorse and encourage technology solutions such as supply chain finance and e-invoicing to encourage instantaneous payment. When a supply chain is established e-invoicing should be the norm. The Code should set out good practices in the use of technology, moving from payment times to encouraging modern systems. It is particularly important to reinforce and build confidence in the Code after the collapse of Carillion. That same collapse also drives a need to give the Commissioner real power.

Financing solutions such as supply chain finance are an important first step. However, these solutions are usually unavailable to smaller suppliers due to the high onboarding costs, and they typically only cover the largest 1 per cent of suppliers, leaving out the 99% who are most in need of cash flow. Now, through machine learning, small businesses can access a similar programme of financing which can allow them to receive payment instantly, as soon as the goods or services have been delivered and the Code should encourage these practices.

Given that these tools now exist, Government can be bolder in what it expects of large businesses. By laying down credible standards for a good payer through the Prompt Payment Code, it would give small businesses the confidence to know what they should be able to expect of their large buyers.

By publicly recognising the businesses which uphold the highest payment practices, for example, businesses which look to offer a range of payment options to all suppliers, the best small suppliers would quickly move to supply those companies. It would significantly strengthen the strategic benefits to large businesses of being cash-on-delivery payers and likely accelerate reform in this area.

By voting with their feet, suppliers can help to speed up the process of moving business to business payments to the cash-on-delivery economy which it should be.

10. Are there any steps that could be taken to encourage more businesses to identify breaches of the Prompt Payment Code by signatories?

One possibility would be a whistle blowing procedure, where the complainants anonymity would be preserved and where the Commissioner would be empowered to mount an enquiry. It is likely that any such procedure would be rarely used because of the costs and time required but it could be useful to highlight egregious cases and to discourage others from breeching the Code. On the positive side recognition should be given to those that demonstrably comply with the Code; it is the “demonstrability” that matters as any new measures to support confidence in the code must be effective.

11. Should the Prompt Payment Code be moved to the responsibility of the Small Business Commissioner?

• Yes

• No

• Please expand on your answer

Yes

The Code’s current management by CICM (Chartered Institute of Credit Management) can appear to present occasional conflicts of interest as CICM represents organisations of all sizes and different business practices. The Commissioner’s mandate is to support the SME sector. In addition, the moves to change the culture of payment in the UK need to be integrated more directly into the management of the Code.

12. What role could business representatives and sector bodies take in fostering a responsible payment culture? How could they use existing late payment measures, namely the Small Business Commissioner, payment practices reporting requirement and Prompt Payment Code?

The BEIS grossly unfair payment terms and practices consultation demonstrated that trade bodies were reluctant to take on the risks and burdens of running aspects of late payment quasi-judicial process themselves. This is understandable because of the legal expertise that would be required and the smaller size of most trade associations. Additionally, individual SMEs regard getting help on such matters as a distress purchase and not something that might require an annual increase in their membership subscriptions.

Particular sectors and/or SME customer relationships do present greater late and long payment problems than others. The Commissioner should be able to share the operation of the SME late payment mediation scheme with representative bodies in those business sectors, while carrying the major share of the costs and risks. Application of a joint scheme with a particular trade body should form part of standard sector terms and conditions. Partnership in the Commissioners processes could work in a fashion like an employment tribunal with the Commissioners representative – an adjudicator, working with a trade sector representative. It might also be advisable to use a simplified procedure involving the Commissioner’s adjudicator and a single trade association representative for most cases.

13. What is your experience of measures to improve payment practices in other countries?

Attention has been drawn to the late payment culture of Scandinavia. All but Sweden appear to have better late and long payment practices and have shorter payment periods than the UK. There will be in part due to national cultural differences. However, those that had experience of business in, for instance, Finland, pointed to increased use of technology to ensure prompt payment by e-invoice.

The Irish prompt payment regime for the public sector is described here <https://dbei.gov.ie/en/What-We-Do/Supports-for-SMEs/Late-Payments/Prompt-Payment-Returns/> , it has many merits. The Irish government automatically pays the interest and conversation charge on any supply invoice which is paid late, whether it is claimed or not.

14. What measures may be effective in addressing lengthy payment terms?

Payment terms should also be reported with payment practices. This should be on a comply or explain basis - there are sometimes sectoral reason for long payment periods. Compensation and interest practices should also be disclosed, together with full accounting accruals for those amounts outstanding, even if suppliers do not eventually claim them. The Commissioner should be empowered to highlight onerous payment periods and potentially to investigate and penalise.

15. Do you think the measures recently announced to improve board level responsibility will have an impact? Does more need to be done to ensure that payment behaviour is considered at board level?

Until these responsibilities are tested in Court or through challenge by government, the media or trade bodies, it is hard to tell. Challenge of this nature will be essential to demonstrate whether these new responsibilities have substance.

16. What are the main barriers in using technology to enhance the payments process? What could be done to encourage greater take up by SMEs?

To enhance the payment process, take up of effective technologies is required by both buyer and seller. There is a need for increased awareness of the available technologies to facilitate prompt payments, to enable buyers and sellers to better understand where it is possible to secure a win-win for both parties.

Current payment processes by large organisations are often linked to ERP systems that involve significant investment, but the process of making a payment can be compromised by poor implementation, communication and resistance to change.

At the same time, SMEs are regularly asked to submit invoices in formats required by the buying organisation or to be onboarded onto a new system that requires time and an understanding of the IT steps required.

Solution providers are active in promoting their services, but often lack scale to reach and promote best practices. Communications from the Small Business Commissioner could address the issue by providing a trusted source of information to help buyers and sellers to better understand the options available to them and select appropriate, effective technologies.

Consistent feedback over many years has also focused on the delays caused by receipting and a lack of processes to quickly identify the potential for errors when conducting a three-way match.

New technologies and processes focus on improving the communication between buyer and seller. For example, a supplier submits their invoice and the first sign of any problems begins when they chase for late payment. There is often a lack of awareness and understanding of the payments process on both sides of the transaction and, once an invoice is submitted, a supplier is often left to chase for payment, rather than be assured of receipt and a timeframe for payment.

17. Are you aware of the finance options available to help manage long payment

periods? Have you faced any barriers to accessing appropriate finance?

On 29th of November Genesis is issuing a research report on SME access to finance, prepared in cooperation with a range of alternative and new lenders which have entered the market over the last decade. A copy is attached. Many SMEs still have problems accessing finance, but these often relate to lack of confidence or the lack of a brokerage service to make sure that the right business and the right lender/investor can be brought together.

18. Have long payment periods impacted your investment plans for growth? If so, how?

• Yes

• No

• Please expand on your answer

Yes

Genesis members report that the constraints on working capital impose by late payment and long payment restrain growth. The Genesis current research project on Access to Finance, developed in partnership with new and alternative lenders, has a focus on lack of confidence in the lending community. The challenges of late and long payment contribute to that lack of confidence.

19. What role, if any, could industry or sector bodies play in identifying and encouraging good payment practices within their sectors?

• Promotion

• Enforcement

• Communications

• Other (please expand)

All trade bodies can promote best practice and new technology; with information and training. It should be possible for bodies to develop adjudication partnerships with the Commissioner.