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Dear Ms Sterman,

Response of the Road Haulage Association to the Late Payment challenging grossly unfair terms and practices consultation

The Road Haulage Association (RHA) is the trade and employers organisation for the hire-and-reward sector of the road haulage industry. The RHA represents some 6,000 companies throughout the UK, with around 100,000 HGVs and with fleet size and driver numbers varying from one through to thousands.

Generally, RHA members are entrepreneurs, including many family-owned businesses as well as some plcs, with more than 80 of the Motor Transport top 100 companies being RHA members. In the view of the RHA efficient transport systems are vital to UK economic growth; given that road transport serves the business sector, the public sector and the public. We think that the viability of the road haulage sector is jeopardized by the UK's late payments culture.

We welcome the focus in the consultation on grossly unfair payment practices. Such practices and the continuing late payment of invoices by customers of road haulage operators are issues that are brought up repeatedly and vociferously by RHA members who feel that the UK's late payments culture blights their industry. Unfortunately road haulage businesses tend to run on low margins. As a result, the impact of late payments on cash flow in particular is significant, and in challenging economic times significant delay in settling invoices sometimes sends otherwise viable businesses into insolvency.

In our view despite the existence of the Late Payment of Commercial Debts (Interest) Act 1998, and the amendments flowing from the 2000 EU Late Payment Directive, and of the Prompt Payment Code, the need for further action remains apparent to RHA members.

The RHA is pleased that the provisions contained in the Small Business, Enterprise and Employment Bill currently before Parliament are seeking to improve the prompt payment reporting, and practice by businesses, and as has been said the new focus in the consultation on grossly unfair payment terms is very welcome. This is because in practice, there remains a marked imbalance of power between large and small businesses whereby the larger business can impose more favourable payment terms from their smaller suppliers. Smaller enterprises are often reluctant to enforce their legal rights or refuse changes to contract terms, leaving them potentially vulnerable



to unfair treatment and exploitation. Such behaviour can be difficult to challenge, let alone resolve, without outside help.

As a trade association, we have not chosen to answer all the consultation questions, many of which are aimed directly at businesses, so are responding by way of this letter, answering some questions only.

Question 7) [For representative bodies] Have you ever been approached to challenge grossly unfair late payment terms and practices, i.e. terms that oust or vary the right to statutory interest, on behalf of a business?

Question 8) [For representative bodies] Have you been made aware of any cases where the contract terms and practices could be deemed grossly unfair but have not been able to do anything about it?

The RHA has been approached, but cannot say how many times members have asked for help in resolving a dispute over late payments or grossly unfair payment terms because this specific information is not centrally collected, although we do collate related data. Some cases are dealt with by RHA staff regionally, as well as centrally, while others may be passed on to RHA Legal Services, if the members are part of the scheme. RHA Legal Services is a comprehensive legal advice, support and representation service which members join, paying a fee additional to basic RHA membership.

Question 12) Do you agree with our proposal to have an indicative list of representative bodies?

Yes, we agree with these proposals.

Question 18) [For representative bodies] What do you think would be the resource requirement of representing a business in terms of grossly unfair terms? How would this change in terms of representing a large firm or a SME?

Question 19) [For representative bodies] How do you think the resource requirement may differ with the different options of where a case can be heard?

Question 20) [For representative bodies] Do you have the necessary resources to handle these cases?

Question 21) [For representative bodies] Would you consider increasing your membership fees to reflect the provision of this service? If so, by how much would the membership fees increase?

The RHA has in the past supported members taking court action if it is judged that there is an issue at stake of sufficient importance to road hauliers. However on the specific issue of court action in relation to late payments or grossly unfair terms, the Board of Directors of the RHA would have to take a decision on whether the RHA would itself, if granted powers in legislation, act on behalf of members to challenge late payments, or whether a solution could be found by adapting the RHA's existing legal services scheme mentioned above.



Similarly we cannot say at this stage whether or not the RHA would be likely to increase the membership fee to allow all members access to representation on late payment and grossly unfair payment term issues. We note that the cost of issuing court proceedings is about to increase significantly, and so this would be one amongst a range of other factors that the RHA would have to put into balance when deciding how these actions might be funded.

However what can be said at this point is that in principle we want to see such rules enacted, and that granting such powers to trade associations would be very welcome, because hauliers would have an additional avenue open to them to challenge grossly unfair payment terms.

We note that representative bodies would be under no obligation to take up any particular case or to proceed to court after intervening on behalf of a member or members, and we think this is the correct position because representative bodies such as the RHA must be allowed to judge for example, whether particular issues are of such significance to the haulage industry that action should be taken as a matter of principle.

Question 22) Do you think we should follow the Irish approach, and add additional indicative criteria to the UK definition of grossly unfair?

Question 23) If we adopt such criteria, should consideration be given to “the strength of the bargaining positions of the supplier and the purchaser”? Are there any other criteria that are particularly important?

We would support the adoption of similar criteria as set out in the Irish regulations mentioned on page 18 of the consultation document. In particular, the RHA thinks that it is important to focus on the strength of bargaining power between the supplier and purchaser when deciding if a payment term is grossly unfair.

General comment

We note and accept that it is highly unlikely that any RHA member suffering commercially because of a grossly unfair payment term could remain anonymous once court action taken by the RHA to have the payment terms declared grossly unfair was underway. We note that such anonymity is only very exceptional granted to an accuser in a situation where, for example, serious criminality is alleged.

RHA member feedback

We have asked our members to report poor and grossly unfair payment practices that they have experienced directly. Unsurprisingly, given the heat that this issue generates, we have received many more replies than is usual. Some of the anonymised comments, which represent the spread of views amongst RHA members, are set out for you to read for yourself below. The comments are not attributed because the RHA members concerned did not want to be identified because they feared that they could lose future work.



Selected comments from RHA about late payments and grossly unfair contact terms

- “What I can confirm is that it is not uncommon, especially at ¼ end or financial year ends for us to be told that the payment due on the 20th (e.g.) will now be made on the 2nd of the following month. They are also very open in telling us that it is because they need to satisfy end of month or end of year bank covenants, and the easy way to do that is not to pay suppliers. This happened to us with two major customers at Xmas time/New Year. What angers me more is that when I spoke to the CFO or FD’s at these multi nationals their approach was (a) complain and we will go elsewhere and (b) why don’t we do the same thing to our suppliers. They were not interested that our biggest costs are fuel, wages and truck HP – all of which are impossible to defer.”
- “Our average payment period is 52 days – however that is a heavily imbalanced by a couple of large customers who now regularly take 90-120 days to pay.”
- “What we are very concerned about is fines from the likes of Amazon and Boots on our customers if deliveries into their RDCs they say are late when they are not or the wrong ref numbers on the goods are queried when they are fine. Our customer gets a fine of £500 and then has to fight it but wants to pass it onto the haulier and implies they could lose the work if they don’t pay it. These companies should be fined themselves for these practices. Why is the trade minister not onto this.”
- “The problem here is that poor payment, or bad practices often involve the bigger regular customers. They know we need their business and effectively blackmail us into accepting them. Our worst culprits are large customers, but they are also regular customers so it would be very embarrassing and commercially suicidal for us to declare actual details.”
- “The key to this for me is for all concerned to remember that the supplier sets the terms and conditions of trading - they are in effect lending the money so they should dictate on what terms payments and business is carried out under.Smaller business need to be stronger when negotiating terms with large corporates, quite often a smaller business offers value added services/flexibility/responsiveness that are not as readily available from the larger less flexible players in the marketplace, and these key selling points should carry a value and be traded alongside payment terms when negotiating contracts/trading agreements.”
- “The worst payment terms are British Sugar 90 days and Mars 120 days, both these companies offer invoice factoring services so you can be paid early but with a discount, whilst interest rates are low this is not a problem, but when rates rise this will start to be significant.”



Public procurement

Turning to related issues I think it is worth stating here that the RHA welcomes the government's latest reforms of the public procurement system, which came into force in February seeking to ensure that 30 day payment terms will be required right down the supply chain. The RHA has been pressing for some time for a contractual requirement that the government's suppliers pay subcontractors promptly, and also that the prompt payment habits and practices of main contractors tendering for government work are considered in the procurement process. We hope that this latter point will be taken up.

Given that the National Audit Office recently criticised the public sector record on paying small and medium sized enterprises within 30 days, these reforms should address some of these issues, although monitoring and policing of the public sector and its main contractors is essential if the reforms are to have an impact.

The requirement, as part of this reform package, that all public bodies should publish an annual late payment report is welcome, but of course this does not address cases where a culture of late payments is entrenched in a particular public body.

The government as the source of much main contract work, with a reported figure of £44 billion being spent by central government on goods and services must make greater efforts to encourage business leaders to change business culture to make prompt payment the norm.

I hope that you will consider and take into account the views expressed in this letter.

Yours sincerely

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