



Small Business Commissioner Consultation  
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Dear Sir/Madam,

**Response of the Road Haulage Association to the Department for Business, Innovation and Skills Small Business Commissioner 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 7,000 companies throughout the UK, with around 100,000 HGVs and with fleet sizes 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 community, the public sector and the general public. Our members take the view that more needs to be done to support the smaller enterprises that are responsible for 48% of UK private sector employment, particularly given the finding reported on page 13 of the consultation paper that 59% of UK small and medium sized enterprises (SMEs) have been negatively impacted by late payments.

Therefore we welcome the proposal that the post of a Small Business Commissioner should be created in order to redress the power imbalance between smaller and larger enterprises.

The RHA takes the view that the Commissioner role will complement existing provisions such as the Late Payment of Commercial Debts (Interest) Act 1998, the 2000 EU Late Payment Directive, and the Prompt Payment Code, as well as the 2015 Small Business, Enterprise and Employment Act which mandates the publication of payment practice information by bigger businesses.

RHA members are extremely concerned about the effects of routine late payment by big customers, as well as the imposition of very long payment terms by larger businesses. Our members view these practices as a blight on the road haulage industry which tends to run on low margins which means that late payment is likely to have a severe impact on cash flow and sometimes leads to otherwise viable businesses becoming insolvent.



If the creation of a Small Business Commissioner is to make a positive impact then the function must be highly visible to the business community; small businesses must be aware of what help the Commissioner can give them regarding the resolution of disputes, and larger businesses must understand that failure to deal fairly with a supplier could lead to intervention by the Commissioner, and that where a dispute is not resolved satisfactorily, bad publicity may result.

With the fall-out of the credit crunch and the effects of recent economic downturn still fresh in the minds of hauliers, we would like to make the point that poor payment practices are more common in difficult economic times. As the economy improves larger customers may be more likely to pay on time so we are concerned that a Small Business Commissioner must be guaranteed the funding to handle any increased workload that may come during the next economic downturn since without proper resources the service may be of limited use.

As a trade association, we have not chosen to answer all the consultation questions, many of which are aimed directly at businesses, but we have sought to deal with as many issues as we can.

### **Consultation questions**

#### **Question 1: What evidence do you have of unfair or unfavourable treatment of small businesses in contract negotiations during the last 2 years?**

We asked RHA members for information about poor payment practices by customers earlier this year and have set out some of the responses below, which illustrate the type of issues faced by road hauliers in relation to late payments and unfair contract 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 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.”

**Question 2: What circumstances can make these practices unfair to small businesses?**

All the situations mentioned above will have a negative impact on the cash flow of the haulier concerned.

**Question 3: Have you ever tried to challenge proposed contract terms or arrangements, or refused to enter a contract including terms, that are unfavourable or you believe are unfair? If you have, under what circumstances and what was the outcome? If not, why not? Please provide specific examples (which may be anonymised) wherever possible.**

RHA members may challenge late payments or unfair terms, but our understanding is that such challenges are rare because many haulage operators fear that they will not receive repeat business from a customer they challenge.

**Question 4: Do you have concerns about any of the practices in the table above? Are there circumstances in which the practices are particularly problematic for the day-to-day running of your business?**

Imposition of extended payment terms is a serious issue for the road haulage industry because of the low profit margins that are commonplace, which mean that failure to settle bills within a reasonable time can have serious cash flow consequences regarding company viability.

**Question 5: Are there circumstances in which the practices listed in the table above are acceptable? Are there circumstances in which they can benefit suppliers? If so, how?**

Generally no, because smaller businesses value certainty and some of the practices mentioned such as prompt payment discounts simply add to the complexity of doing business. Road hauliers are affected negatively by the arbitrary variation of terms particularly because the upfront cost of fuelling their vehicles before any paid work can be undertaken means that they operate with high fixed costs beyond the usual costs such as staff wages.

**Question 6: Have you ever experienced any of the practices listed in the table above? If yes, which ones, when and how many times? Did they benefit or harm you?**

Please refer to the answers given above.

**Question 7: Are there other unfavourable or unfair payment practices which you have encountered? Please provide examples (these may be anonymised).**

RHA members working for retailers such as major supermarkets often have clauses imposed on them meaning that if a driver misses a narrow delivery window of say fifteen minutes for restocking the shelves, then the haulier is penalised financially. Our members view these conditions as exceptionally unreasonable, given that drivers have little control over the level of congestion or incidents on the road on any day.

Missing a delivery slot can result in the load being rejected, and then the haulier has to return the load to the supplier, with the supplier being penalised by the customer such as a retailer, and then passing the penalty onto the haulier for failure to deliver. Often if the load can be redelivered then the supplier expects this to be done with the extra cost being borne by the haulier.

**Question 8: If you are a small business, or a representative organisation for small businesses, what could be done to encourage more businesses to claim interest and late payment charges where appropriate and create an environment in which this is considered the norm?**

Making any challenge to a large customer is difficult for a small business if the SME has limited confidence that its customer will treat it fairly. If there is a good working relationship between supplier and customer then it is unlikely that the point will be reached when the small business seeks to claim interest because the two businesses will resolve the issue well before that stage. The issue of interest is only likely to come up when relationships have broken down.

Even where a smaller business has resolved to pursue a claim, unless the amount in dispute is within the small claims court limit, then the high level of court fees and the cost of legal representation may put a business owner off going to court.



**Question 9: How could the new Commissioner be helpful in resolving late payment disputes?**

In our view for the Commissioner to play a useful role in dispute resolution the post needs to be well known to UK businesses both small and large, so that potential complainants know that they can go to the Commissioner, and so bigger businesses understand the impact, particularly in terms of negative publicity, that a finding by the Commissioner could have.

This means that the Commissioner role needs to be properly resourced so it can make an impact.

**Question 10: Have you ever taken action to resolve disputes about these wider supply chain issues? If yes, under what circumstances and what was the outcome? If not, what deterred you? (Examples may be anonymised.)**

N/A

**Question 11: How could the new Commissioner be helpful in resolving those disputes?**

See the answer to question 9.

**Question 12: Do you agree that the Commissioner should provide general information and advice to small businesses on a confidential basis, in relation to a dispute with businesses which are medium-sized or large?**

Yes. However we are concerned at the suggestion that the Commissioner will offer no legal advice to potential users. While we understand that it is not appropriate for case specific detailed legal advice to be given, the system may not work well unless smaller businesses are given general legal advice to confirm that they do indeed have grounds to complain, and that their concerns are not frivolous. Without such advice we think that some small businesses may not have the confidence to pursue a complaint or to go to mediation.

**Question 13: If you are aware of other advice services for small businesses that assist with dispute resolution, have you used them? If yes, please describe your experience and whether it was positive or negative. If no, why did you decide not to use the advice service?**

RHA Legal Services is a comprehensive legal advice, support and representation service which members join, paying a fee additional to basic RHA membership.

**Question 14: Would you consider using a mediation service to support you in settling a dispute with another business?**

We think that some RHA members would use a mediation service.

**Question 15: Are there any barriers that would prevent you from using a mediation service?**

No comment.

**Question 16: Do you agree that the Small Business Commissioner should offer mediation (whether in-house or via a third party)?**

**If yes, please say what specific gaps might it fill between other existing services or what specific added value might it offer?**

No comment.

**Question 17: Do you agree that the Small Business Commissioner should be able to adopt either or both of the measures set out above to encourage meaningful participation in mediation?**

Yes.

**Question 18: Are there any measures you think should not be used or others we have missed? Please explain your reasoning.**

As mentioned above we think that general legal advice should be offered to potential complainants by the Commissioner at the outset, so the businesses have some basis for deciding how to proceed.

**Question 19: Do you agree with the framework set out above for:**

**a. Looking into individual complaints?**

See the answer to question 18.

**b. Making recommendations including the factors to be taken into account? What factors do you think should be considered by a Commissioner in deciding if the behaviour of a business has been fair and reasonable?**

No comment.

**c. Publishing information about specific findings?**

Given that larger businesses are likely to fear poor publicity more than losing what to them might be a relatively minor amount of money in a legal dispute with a small business, we think it is essential that the findings of the Commissioner should be publicised widely.

**d. Producing annual reports?**

See the answer to 19.c above.



**Question 20: Comments on this outline of costs and benefits are welcome. For example are there any additional costs or benefits that you identify being associated with the establishment of the Service? Please provide any analysis you may have to inform our costs and benefits assessment.**

The only point we would make here is that establishment of the Small Business Commissioner service must be widely publicised to small and large businesses, and so significant funding must be found to ensure that the business community knows about and understands what the purpose of the Commissioner is.

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

Yours faithfully

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