

ACCA Consultation Response: Department for Business, Energy and Industrial Strategy Consultation on Reform to Prompt Payment Code

16 October 2020

- 1. Government believe that an important policy driver for action on late payment is to help safeguard the cashflow of those most impacted when it happens. These are often the smallest businesses, who are least able to manage cash flow shortfalls. Do you agree with introducing an additional Code principle whereby signatories commit to pay 95% of invoices from smaller businesses within 30 days?**

Covid-19 has hit many small and medium businesses particularly hard, with cashflow emerging as an urgent cause for concern. ACCA's SME Health Tracker Research, running April- July and representing over 21,000 SME's, found that around a third of smaller businesses in the UK felt they would not be able to access enough cash to see out two more weeks of lockdown. Data from July onwards showed that 14% of SME clients were looking to tighten their credit terms with customers but just 4% were seeing customers do the same; indicating SME's in particular were tightening payment terms to secure timely payment.

On this basis, ACCA strongly supports the notion that smaller businesses should be paid within 30 days. A longer period (60 days) is clearly more desirable than a late payment (e.g. a payment due in 30 days being paid on the 45th day). Businesses are able to plan ahead and in the current circumstances, is more likely to survive when a payment is made within the agreed number of days.

- 2. If you agree that the principle in Question 1 is important, what should the definition of smaller businesses be?**
 - **Based on the current definition of small business (0 – 50 staff)**
 - **Based on the current definition of small and medium sized enterprises (0 – 250 staff)**
 - **Based on a turnover threshold with the business**

To keep criteria clear, we would suggest a definition of small business in line with current definitions (under 50 employees). Additionally to ensure the Code operates in a way that is able to be analogous with future legislation introduced to combat late payment, the code should set definitions in line with existing legislative criteria.

- 3. Do you agree that Code signatories should continue to commit to pay 95% of invoices from all other suppliers within 60 days?**

As above, 60 days is preferable to extra delay or no payment but signatories should work toward 30 days. As the Code is intended to be aspirational above and beyond statutory terms, the target for signatories to work toward 95% within 30 days is appropriate.

4. Do you agree that, to ensure commitment to the principles and ethos of the Code, the company's Chief Executive Officer or Finance Director (or, in the case of a small business, the owner of the company) should sign the application to join the Code?

ACCA believes Prompt Payment should be treated as a matter of CSR to ensure local smaller suppliers are treated fairly. CEOs, FDs and/or senior board members should sign the application to join the code.

In a panel discussion on the topic in October 2020, ACCA members noted that larger businesses often feel more comfortable applying interest and fines than small businesses that, in turn are more likely to suffer the effects of late payment. Members unanimously agreed that late payment from large corporate companies has the biggest and most detrimental impact on the stability of small businesses. Late payment from large businesses creates a 'domino effect' throughout the supply chain, in turn prohibiting smaller creditors from being able to make their own payments to others on time.

5. We believe that the process for ensuring compliance with the Code is fundamental to its integrity. Which of the following mechanisms should be used to support compliance with the Code?

- **Random sample checking of signatories using the Payment Practices Reporting data**
- **An annual report/statement from the CEO or Finance Director of signatories who are not required to submit data under Payment Practices Reporting regulations on their payment performance**
- **Transparent and published processes for dealing with Code suspensions, removals and reinstatements**
- **All of the above**

ACCA supports all of the above, with some comments.

We would question whether it would be effective to create a parallel reporting requirement for those that are not required to submit data under Payment Practices Reporting regulations. The efficacy of published reports and data will be reliant on the user/supplier's ability to understand them. On this basis, it would be more helpful to have a voluntary reporting scheme comparable to PPR (duty to report) for those not required by law. To recognise the additional contribution, voluntary reports could be listed as an additional 'kitemark' alongside other data or code signatory logos (detailed below in Q5 response).

ACCA believes there is unmet opportunity to compile reports and data on corporate payment practice in a single public facing platform. In a 2018 survey of ACCA's network it was found that 58% of members that did due diligence used Companies House to check a potential customer.

ACCA Member & Corporate Sector Panel Chair, Ashley Smith has also conducted extensive research on late payments and overall, found that very few suppliers do sufficient due diligence on payment history. In a broader recent discussion on the Prompt Payment Code with ACCA members, many agreed that the PPC can provide a one-stop-shop for credit searches on potential customers. Members agreed that Government should work to collate data from the Code, Companies House and Duty to Report to provide a single overview of businesses' payment history and set apart those that chose to sign up to the Code.

Other platforms may be considered, however in the same 2018 survey a large proportion of respondents weren't aware of the existence of Duty to Report (74%) or the Small Business Commissioner's Office (54%).

ACCA would support a single point of access for this information with all reporting/ Code mechanisms listed as standard on all business pages with 'checkmarks' applied to each of the reporting regimes or schemes the business participates in.

ACCA believes that revised deterrents will strengthen the PPC. However, it was highlighted in our panel discussion that the current legislation does not incentivise larger businesses to comply; more transparency around those that pay their suppliers late will help combat the issue of late payment. The administrator of the code may also want to publish regular notices of those removed from the code that are not actively making changes to seek reinstatement within the three months following removal.

6. Should Code compliance be measured by any of these additional principles?

- **Percentage of invoices paid to terms**
- **Average time taken to pay invoices**
- **Other (please specify in box below)**

Percentage paid to terms: ACCA believes a figure using percentage of invoices paid is preferable, allows better tracking of progress over time. Averages may allow one exceptional incident or dispute to cause an statistical anomaly in several reporting periods of otherwise uninterrupted and largely beneficial progress.

Other: The Code promotes fair treatment and can do more to expose unfair or imbalanced terms for smaller suppliers. Compliance with fair treatment guides could be better measured through the collection of data on the average percentage of original debts and interest paid on time, in order to tackle instances of early payment discounts and interest debts.

7. We strongly believe that being a signatory to the Code, and being able to demonstrate compliance, should be a badge of honour for companies. Would a logo you could display on documentation, such as websites, contracts or tenders, be helpful to show your compliance with the Code?

If awareness of the code were improved this may be helpful, however we believe more meaningful work must be done to promote the Code.

In a survey run in 2015 (research by ACCA member and Corporate Panel Chair Ashley Smith) it was found that just 25% of members were aware of the Prompt Payment Code, rising to 30% in 2018. Materials promoting the Code have always been prompted as a product of ACCA's long standing relationship with CICM and now, the Small Business Commissioner. However, we believe the lack of broader corporate awareness of the code contributes to finance teams being less likely to promote to leadership and give assurances on organisational payment practices. Persistent low levels of awareness of the Code will undoubtedly affect recognition of the importance of the logo.

Companies need to be encouraged to promote their own participation in the code and measures they are taking to support better payment practice. Additionally, prompt payment must be promoted and enforced as a matter of governance and CSR.

8. Would the use of a logo give smaller businesses greater confidence and certainty that they would be paid promptly?

This depends greatly on awareness of and adherence to the Code.

Beyond this, more must be done to combat poor practice overall, outside of those signed up to the code. ACCA practitioners with SME client bases suggested that for many smaller businesses or freelancers, the opportunity to win business with large corporates might overshadow the risks presented by data indicating poor payment practice.

To address SME concerns and grant assurances there may need to be additional 'material' mechanisms such as enforcement of fines and interest payments by a third party.

ACCA is compiling a response alongside consultation with members on the open consultation on 'Increasing the Scope of the Powers for the Small Business Commissioner'.

9. Could the logo help raise a challenge against payment breaches by Code signatories?

Yes, as part of a wider range of enforcement measures to combat poor practice.

The use of a logo to demonstrate compliance may be an effective method if the code as a whole were promoted well by companies that obtain it. ACCA believes greater promotion and awareness will also encourage others to improve their level of compliance.

10. Do you agree that the administrators of the Code should be able to approach signatories on the basis of an anonymous complaint by a third party, e.g., a trade body on behalf of their member, to discuss their payment practices?

Yes, administrators should be able to approach signatories on the basis of an anonymous complaint. However, we question whether the use of Trade Bodies as intermediaries would be effective. The introduction of another third party intermediary to report complaints may only serve to slow the filing of complaints.

Complainants should instead be offered an option to submit anonymous complaints directly to an appropriate case manager that can give appropriate updates on the progress of the complaint.

However, there may be a role for trade bodies as benchmarking authorities and regulators to combat specific industry hotspots for late payment. Code administrators should be permitted to work with trade and industry bodies to take remedial action against businesses in their industry where repeated poor payment practice in an industry falls behind national data.

11. With regard to introducing new principles to the existing Code, we acknowledge that changes introduced might require time to implement. How long might it take for signatories to be fully prepared to report on any new requirements, for example, reporting on payments to smaller companies?

New signatories should be prepared upon signing. Existing signatories should be given 6 months to move toward a reformed Code.

12. What other measures or reforms might be introduced and not mentioned above to further strengthen the Code and give greater confidence to those contracting with signatories?

In light of this survey, the Small Business Commissioner's Office offered to hold a short discussion with ACCA members on the reform of the Code. In our discussion members stated that as a profession and holders of higher certifications which are intended to uphold the highest standards, preventing late payment must also be a point of corporate and social responsibility for those in the profession. The importance of paying others on time must be emphasised throughout professional memberships and all agreed that there may be scope for additional education through intermediaries such as ACCA. Members agreed they would like to see the Commissioners Office and related government Departments work closely with bodies to promote campaigns and where possible, incorporate the topic into mandatory Continued Professional Development and educational materials.

Separately, the issue of late payment might also be targeted via the audit process. Auditors may become responsible for verifying pay-on-time data – this will encourage businesses to ensure they adhere to the PPC.

We would also support a targeted feasibility study among code signatories, trialling the automatic application of fines and interest payments by a third party (i.e. Small Business Commissioner's Office).

13. Do you believe that a reformed Code will reduce late payment, act as a preventative measure to avoid or resolve disputes, and help to protect business relationships?

For those that effectively engage with it the Prompt Payment Code has been a powerful benchmarking tool in combatting poor payment practice. However, participation and reward to date has been highly reliant on awareness of the Code. Government must get behind promoters of the Code and other benchmarking activities to make participation a meaningful and ubiquitous badge of honour for business.

ACCA would be pleased to engage further on any of the topics above, including adoption via corporate governance and CSR reform.