HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Late Payment of Debts

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Summary

The provision of credit by suppliers to customers is an established feature of business transactions and essential for the efficient operation of the economy. However, the provision of goods and services ahead of payment means that the supplier can be vulnerable to payment delays. For this reason, it is important that businesses have sound credit management skills as, otherwise, late payments and, worse still, bad debts will eat into profits. However, where a supplier does everything right to ensure that credit given is not abused, it is still possible for the supplier to find that a payment is received late.

This is not a new problem and successive governments have tried different approaches. Conservative Governments in the 1990s preferred encouragement and 'naming and shaming' to the other main alternative of a statutory right to interest on unpaid bills. The Labour Government of 1997 decided otherwise and introduced legislation – the *Late Payment of Commercial Debts (Interest) Act 1998* - to give companies legal remedies beyond those of the normal commercial courts. EU legislation followed this approach and extended creditor rights' further.

The *Small Business, Enterprise and Employment Act* included powers to require businesses to report, and make public, their payment records. The Reporting on Payment Practices and Performance Regulations 2017 were introduced in February 2017.

It is difficult to prove how effective legislation has been. Fairly consistently about 30% of SMEs suffer from late payment.

Sources of advice for companies are given at the end of this Paper.

1. Introduction

The provision of credit by suppliers to customers is an established feature of business transactions and essential for the efficient operation of the economy. However, the provision of goods and services ahead of payment means that the supplier can be vulnerable to payment delays. For this reason, it is important that businesses have sound credit management skills as, otherwise, late payments and, worse still, bad debts will eat into profits. However, where a supplier does everything right to ensure that credit given is not abused, it is still possible for the supplier to find that a payment is received late.

Many businesses – especially small businesses – experience considerable difficulties from their customers failing to pay their debts on time. Delaying payment gives the debtor 'free' working capital but puts financial pressure on the supplier. Often the supplier is caught between needing payment and antagonising a large customer.

Successive governments have used either legislation, example or exhortation to improve standard practice going back to the *Late Payment of Commercial Debts (Interest) Act 1998*, which introduced a statutory right for businesses to claim interest on the late payment of commercial debts.[1]

Prior to its introduction, businesses were only able to claim interest if a term to that effect was included in the contract or if the courts decided to award interest in their favour in the course of debt recovery proceedings. Rights for creditors under UK legislation were extended by a European Directive. Under the Act the right to claim was introduced in three stages.

This Paper outlines the history of initiatives to improve business practice.

[1] Further background is given Library Research paper 98/42, 2 April 1998.

2. The move to legislation

2.1 The 1994 white paper on competitiveness

In the early 1990s the problems of small businesses obtaining payment from their customers, especially from larger businesses, attracted considerable public attention. In 1993 the Forum of Private Business estimated that 89% of small and medium sized businesses in the UK were paid late: on average, these businesses were paid 81 days after the invoice, or 51 days after the average due date.[2] In the 1993 November Budget Kenneth Clarke, the then Chancellor, announced that the Conservative Government was looking at options to improve payment performance:

> There is one issue which year after year tops the list of Budget representations made to all of us by the small business community the problem of late payment. There can be nothing more frustrating than delivering a quality product on time at a competitive price and then finding that one does not get paid for months. Late payments wreak havoc with cash flow, and for many small firms they can make the difference between survival and failure. The habit of late payment is corroding our business culture. I am quite sure that it needs to be dealt with. There are many options for tackling that problem, and my Right Hon. Friend the President of the Board of Trade and I will be looking at two in particular: first, a new British standard for payment performance; and secondly - more significantly - legislation to provide for interest on late payments. Late payment was a serious problem for small businesses throughout the last recession. I believe that the time has now come to take that issue head on.[3]

To this end the then Department for Trade and Industry (DTI) published a consultation paper which examined the causes of late payment and sought views on possible solutions including legislation for a statutory right to interest and a British Standard for prompt payment.[4] The results of this exercise were incorporated into a white paper on competitiveness published in May 1994.[5]

Generally speaking the business community was found to be divided on the issue. The CBI, the Federation of Small Businesses, the Institute of Credit Management and the Institute of Chartered Accountants in England and Wales all expressed serious reservations, arguing, variously, that it would be better to develop a climate of prompt payment rather than to legitimise late payment by legislating for it; that large companies might simply demand extended credit periods or the signing of exclusion clauses; and that small businesses would be reluctant to take court action against their customers for fear of losing that business.[6] Conversely, the Forum of Private Business argued that voluntary codes

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2 "Legal right to interest on late debts is urged", *Financial Times*, 1 November 1993

3 HC Deb 30 November 1993 c 938

4 DTI press notice, *Government Announces Consultation on Late Payment of Commercial Debt*, 30 November 1993

5 Competitiveness: Helping Business to Win Cm 2563 May 1994

6 "CBI recommends debt ombudsman", *Financial Times*, 6 April 1994

of practice have failed to make any significant impact on the UK's late payment record.[7]

The consultations revealed a 'narrow margin' in favour of a statutory right to interest on late payment. But, a decision on the matter was postponed and instead it elected to continue the policy of leading by example. Government required all government departments and agencies to comply with the CBI's prompt payment code, and to provide information on their payment policies and achievements with a promise to keep the situation under review for two years.

A series of other measures, including requiring public companies to state their payment policies in their directors' reports and encouraging the development of a British Standard for prompt payment were also announced.

2.2 'Your business matters' and the 1996 review

In January 1996 the then Conservative Minister for Small Business, Richard Page, announced the Government would re-examine the case for a statutory interest rate.[8]

On 26 September 1995, the 'Your Business Matters' conferences were launched by John Major, the then Prime Minister, to canvass the views of small businesses about their general concerns. The findings of 11 regional conferences were presented in a report to a national conference on 11 March 1996.[9] Speaking at this conference, John Major outlined a number of new measures to help combat late payment but by now there was evidence from the conferences that firms were:

> not universally - against introducing a statutory right to interest. The DTI are examining all these responses. The problem is that many of the possible solutions cause as many difficulties as they solve. We have to make sure that what we do make things better not worse. There are no easy answers to late payment. But that does not mean that there is nothing we can do. I was very struck by the quotation in your conference report, quoting a businessman who said that 'Rather than legislate, we should manage by embarrassment'. There is a lot to be said for that; peer pressure does work. So I believe we should take steps to generate embarrassment amongst those who wilfully and continually pay late.[10]

7 "Decision on debts gets split reaction", *Financial Times*, 25 May 1994

8 HC Deb 11 January 1996 c 293W

9 The conferences were organised by a steering committee representing the IoD, the Federation of Small Businesses, the Forum of Private Business, the TEC National Council, the Association of British Chambers of Commerce and the CBI.

10 "Prime Minister's Speech to 'Your Business Matters' National Conference", QEII Centre, 11 March 1996

On 20 March 1996, Ian Lang, then President of the Board of Trade, announced that all government departments would have signed up to the CBI's 'Prompt Payment Code' by the end of March 1996.[11]

Information about the Prompt Payment Code can be had from the Chartered Institute of Credit Management's website here.

The Department's review of a statutory interest rate concluded on 13 June 1996 and the Government confirmed its 1994 decision not to introduce legislation to provide for interest on overdue commercial invoices. Commenting on the results of the review, Richard Page said:

> More than 100 representative organisations, banks and businesses responded to the DTI review. The responses, particularly from bodies which directly represent small firms - like the Federation of Small Businesses, the IoD and the Association of British Chambers of Commerce - show a clear rebuttal of the call for a statutory right to interest on late payment. Even organisations in favour of legislation have reservations about its effectiveness. And new research indicates that better credit management by small firms can have a significant effect on the incidence and impact of late payment.[12]

At this time the Government published new targets for government departments, with the aim of paying 100% of undisputed bills on time.[13]

A second consultation document was published in June 1996, seeking views on whether a new disclosure provision should be introduced into the *Companies Act,* requiring all public limited companies to publish details of their payment practices in their directors' report.[14] Comments were invited by 27 September 1996. As a consequence regulations were introduced in January 1997 to require all public limited companies and their large private subsidiaries to disclose how long, on average, it takes them to pay their bills.[15] Finally in September that year a new British Standard on prompt payment was launched - BS7890 – again by the then Minister Richard Page:

> The Government recognises that late payment is a serious problem for small businesses and is committed to tackling it. So, with the aim of helping to promote a "prompt payment culture" we have supported the development of the British Standard on Prompt Payment. The Standard will set out procedures - for both small firms themselves and the firms they supply -that will help to make sure that more invoices are settled on time. And the Standard has teeth -Trading Standards Officers will be able to

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11 DTI press notice, *Ian Lang Announces Late Payment Consultation Timescale*, 20 March 1996

12 DTI press notice, *Government rejects statutory interest on late payment*, 13 June 1996

13 *ibid.*

14 DTI, *Tackling Late Payment: Stating Payment Practice In The Directors' Report*, URN 96/842, June 1996

15 The *Companies Act 1985 (Directors Report) (Statement of Payment Practice) Regulations* SI 1997/571 were debated in the Commons on 13 February (HC Deb cc 476-488), and came into effect on 4 March 1997.

> investigate complaints of non-compliance by those claiming to abide by the Standard.[16]

2.3 The Labour Government's approach

Even before it came into office in 1997 the Labour party demonstrated a greater commitment to the idea of statutory interest. In March 1996 in a speech to the Industry Forum's 'Small Firms Conference', Tony Blair, Leader of the Labour Party, announced:

> Paying your bills late brings a financial gain to the defaulter. We need to create a situation in which late payment is not worth it. A statutory right to interest on late payment is precisely that: an entitlement. It is up to the creditor as to whether to use it. It simplifies the complexity of the common law rules of contract on interest.
>
> It is worth noting that every other member of the European Union, with the exception of Eire, has a general right embodied in legislation to interest in the event of late payment on commercial debt embodied. Sweden twenty years ago put on to the statute book a right to interest. The result has not been a flurry of court proceedings, but the development of a commercial culture in which bills are paid promptly.
>
> The percentage of companies paying late in the UK is the highest in Europe. Our proposal is that the statutory right to interest on late payment should only apply to payment by companies above a certain threshold. We will consult on the best method of implementing this proposal, so that small firms gain the maximum advantage and we avoid the common fear that small companies will simply end up pursuing other small businesses.[17]

A commitment to introduce a statutory right to interest on late payment of commercial debt was part of Labour's 1997 general election manifesto.

Following its election victory the new Labour Government announced its intention to introduce this legislation in the 1997 Queen's Speech on 6 May. In July 1997 the DTI published a green paper outlining its proposals on the best way to implement such legislation.[18]

A summary of these responses was published on 4 December by the then Small Firms Minister Barbara Roche, who noted, "there is strong support for the Government's proposals on the best way to legislate to give small businesses the right to charge interest on late payment of commercial debt."[19]

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16 DTI press notice, R*ichard Page welcomes new prompt payment standard - DTI and Treasury become first to sign up to BS7890*, 10 September 1996

17 Speech by Tony Blair MP, Leader of the Labour Party, to the Industry Forum's Small Firms Conference, at Gibson Hall, Bishopsgate, London, 20 March 1996

18 DTI, *Improving the Payment Culture: A Statutory Right to Claim Interest on Late Payment of Commercial Debt*, Dep/3 5290 July 1997; DTI press notice P/97/504, 28 July 1997

19 HC Deb 11 December 1997 c 672W. A copy of this paper was deposited in the Commons [Dep/3 5689].

3. Legislation

3.1 Late Payment of Commercial Debts (Interest) Act 1998

A Bill was introduced in the House of Lords on 10 December 1997 and the *Late Payment of Commercial Debts (Interest) Act 1998* received Royal Assent on 12 June 1998, and came into force on 1 November 1998.

It provided for the right to claim interest to be introduced three stages:

- From 1 November 1998, small businesses have been able to claim interest from large enterprises (including public sector organisations) on debts incurred under contracts agreed after that date.
- From 1 November 2000, small businesses have been able to claim from other small businesses on debts incurred under contracts agreed after that date.
- From 8 August 2002, all businesses and the public sector will be able to claim interest from all businesses and the public sector on debts incurred under contracts agreed after that date.

For the purposes of the Act, small businesses were defined as any business with 50 or fewer employees. Interest could be set according to formula or at a rate set by the Secretary of State.

The legislation allowed businesses some latitude in setting their own credit terms but if no credit period had been agreed, the Act set a default period of 30 days after which interest would apply.

The 30 day default period started from the delivery of the goods or the performance of the service by the supplier; or the day on which the purchaser has notice of the amount of the debt, whichever is the latest.

The Act applied only to commercial contracts and various contracts were specifically excepted from the legislation:

- a consumer credit agreement.
- a contract intended to operate by way of mortgage, pledge, charge or other security.
- a contract of a description specified in an order made by the Secretary of State for the Department of Trade and Industry.

The Government was keen to allow businesses to agree their own contractual terms giving a right to interest if bills are paid late. The Act, therefore, gave precedence to contractually agreed provisions. However, the Act contains provisions to prevent parties to a contract "contracting out" of the legislation by setting very low rates of interest on late payments, or by extending credit terms excessively, or by any other terms which result in no substantial remedy for late payment.

The statutory right to claim interest was not compulsory; a supplier was free to decide whether or not to make a claim for interest.

If invoked the interest rate is the 'statutory' rate of 8% plus the Bank of England Base Rate. It is currently 8.5% therefore.

The provisions for the start date for statutory interest were amended by the *Late Payment of Commercial Debts (Amendment) Regulations 2015*. According to the explanatory note, the purpose of this was to clarify section 4 of the Late Payment of Commercial Debts (Interest) Act 1998.

> Section 4 dictates the start date for statutory interest arising under the Act. Since 16 March 2013, this start date has been capped at 30 days for public authorities, 60 days (or more if not grossly unfair) for commercial debtors.
>
> The latest amendment replaces the most obscure subsections 4(3) to 4(5) with a simpler, though still complex, set of subsections 4(2A) to 4(2I). The effect of section 4 is unchanged. As amended, section 4 still only dictates the start date for interest under the Act. It does not affect the start date for contractual interest, or the date for payment of the principal debt.

3.2 Subsequent legislation

First EU directive

On 15 June 2000 EU Member States adopted a directive on combating late payment in commercial transactions (Directive 2000/35/EC), which they agreed to implement by 8 August 2002.[20]

The directive required Member States to introduce a right to claim interest in the event of late payment.[21] Although the directive covered much of the same ground as the recently passed UK legislation it expanded the scope and accelerated its introduction.

- The Act was to apply to all commercial transactions only from November 2002 but the directive brought this forward to on or before 7 August 2002.
- The directive introduced a new right namely, unless the debtor is not responsible for the delay, a creditor should be entitled to claim reasonable compensation from the debtor for all relevant recovery costs incurred as a result of late payment.
- In addition, Article 3 offered organisations officially recognised as or having a legitimate interest in representing SMEs the opportunity to take action according to the national law if an agreement is considered grossly unfair. Other recent European initiatives incorporate this principle of 'representative claims'.

20 As with the UK legislation on late payment, the directive is limited to payments made as remuneration for *commercial* transactions and does not regulate: transactions with consumers; interest in connection with other payments (for example, payments under the laws on cheques and bills of exchange); and payments made as compensation for damages including payments from insurance companies.

21 The level of interest to be set at the European Central Bank base rate (or equivalent rate set by its central national bank if the Member state is not participating in the third stage of economic and Monetary Union) plus at least 7%.

The definition of 'reasonable compensation' dominated a consultation document on the implementation of this legislation published in February 2001.[22] This considered eight implementation options for the right of 'reasonable compensation':

- fixed scale of costs based on the size of the debts;
- fixed scale of costs based on collection activities, allowing the creditor to claim a fixed amount for each collection step taken;
- fixed scale of costs based on the age of the debt, reflecting the fact that costs are likely to increase as the debt gets older;
- one-off percentage charge, irrespective of the size or the age of the debt;
- fixed scale of percentages that increase with the age of the debt;
- claims for actuals;
- a combination option, incorporating an initial fixed claim followed by the opportunity to claim the actual costs if the debt is passed to a third party to pursue recovery; and
- a combination option, incorporating a fixed amount for every collection step plus the opportunity to claim against a fixed percentage scale that increases with the age of the debt.

The directive was transposed into UK law by the *Late Payment of Commercial Debts Regulations 2002*.[23] The Government chose the first of the eight options – listed above – to ensure 'reasonable compensation' (that is, a fixed scale of compensation based upon the size of the debt). This would operate as follows:

Size of the unpaid debt	Amount to be paid to creditor
Below £1,000	£40
£1,000 - £9,999	£70
£10,000 and above	£100

SI 2002/1674

According to a regulatory impact assessment (RIA) on transposing the directive into UK law published by the Small Business Service, the option chosen (a fixed scale of compensation based upon the size of the debt) was selected because:

> it is simple and easy to use, and has no requirement for businesses to keep special records. As a result, it is hoped that this will encourage small businesses to use their new entitlement. The compensation sums are a recognition of the fact that telephone calls and letters will have been directed to the debtor because the creditor, and in particular the small business creditor, will attempt to get the debtor to pay the money owed, and as such the

[22] *Implementation of Directive 2000/35/EC on Combating Late Payment in Commercial Transactions URN 00/1425*, February 2001
[23] SI 2002/1674

> compensation sums provide the reasonable compensation for debt-recovery costs that the directive expects.[24]

Other changes introduced at this time included:

- simplifying the calculation of the interest rate for late payment by fixing the rate for a six-month period[25] - rather than fluctuating monthly as at present;
- allowing representative bodies to challenge in court grossly unfair contractual terms on behalf of small businesses; and
- extending the late payment legislation to include businesses of all sizes and the public sector - at present only small firms can claim interest on debt.[26]

On the question of representative claims – the second requirement for legislative change placed on the UK by the directive – the RIA noted that a proposed review by the Lord Chancellor's Department (LCD) had not gone ahead so "an alternative means to provide this entitlement has had to be identified."[27]

Two choices presented themselves. First, the directive allows that action to prevent grossly unfair contractual terms may be taken before the courts or before specified 'competent administrative bodies'. In addition those taking action on behalf of SMEs could be required to prove their interest on a case by case basis, or to be one of a specified list of recognised authorities. In the event the Government decided on the first option in both cases:

The 'third party action' based solution allows organisations which can demonstrate a legitimate interest in the SME sector that they wish to act on their behalf, do so and challenge the grossly unfair terms that have been identified by either the businesses concerned or the organisation itself.[28]

Second EU directive

In 2011, a European directive[29] on combating late payment in commercial transactions was introduced. It was given effect by *The Late*

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24 Small Business Service, *Regulatory impact assessment: Transposition into UK Law of EC Directive 2000/35/EC on combating late payment in commercial transactions*, May 2002 paras 3.10-11. This document is available on the SBS site at: www.sbs.gov.uk/content/pdf/RIA.pdf.

25 The Bank of England base rate on 30 June and 31 December determines the reference rate for the subsequent six months.

26 DTI press notice P/2002/331, 29 May 2002. Updated guidance on the law is published on the Better Payment Practice Group's site at: www.payontime.co.uk/downloads/late_payment_brochure.pdf.

27 *op.cit.* para 3.5

28 SBS, *Regulatory impact assessment: Transposition into UK Law of EC Directive 2000/35/EC*, May 2002 paras 3.14-15. For more details on this issue see SBS, *Implementation of Directive 2000/35/EC URN 00/1425*, February 2001 pp 30-34.

29 2011/7/EU

Payment of Commercial Debt Regulations 2013[30] which came into force on 16 March 2013.

Responding to a consultation on implementing the directive BIS noted:

- public authorities will be required to pay suppliers within 30 calendar days of receipt of an undisputed invoice (this matches the UK Government's standard practice for the public sector)
- for business to business payments, the period for payment fixed in the contract should not exceed 60 days, unless otherwise expressly agreed and provided such terms are not grossly unfair
- it copies current UK practice of a default payment period of 30 days, where terms have not been agreed
- there is a minimum €40 (approximately £31) for compensation (current UK legislation sets three levels of compensation payment according to the value of the payment). Suppliers will not be prevented from seeking to claim additional recovery costs.

> The government is already working alongside industry bodies in the UK to encourage more businesses to sign up to the Prompt Payment Code which encourages good practice. Over 1,100 businesses have already signed up to the Code.[31]

Changes made to UK law by the directive are summed up in the table below:

Changes to UK interest on late debts legislation made by EU directive

Business to business payment terms	The period for payment fixed in the contract does not exceed 60 calendar days, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor. It should therefore remain possible for parties to agree on payment periods longer than 60 calendar days provided such extension if not grossly unfair to the creditor.
Public sector payment	That in commercial transactions, where the debtor is a public authority, the payment period does not exceed 30 calendar days following receipt by the debtor of the invoice.
Statutory interest rate	Simple interest is calculated as equal to the sum of the Bank of England reference rate plus at least eight percentage points.
Compensation for recovery costs	The creditor is entitled to obtain from the debtor, a fixed charge of £40, £70 or £100 depending on the size of the debt (under £1,000, under £10,000, and higher), plus additional reasonable costs incurred.
Application	Contracts concluded before 16 March 2013 will be excluded from the amended provisions.
Verification periods	The maximum duration of a procedure of acceptance or verification does not exceed, as a general rule, 30 calendar days. Nevertheless, it should be possible for a verification procedure to exceed 30 days where agreed and not grossly unfair to the creditor.

Source: BIS

30 SI 2013/395
31 BIS press release

Small Business, Enterprise and Employment Act 2015

The *Small Business, Enterprise and Employment Act* was a wide ranging measure dealing with numerous issues loosely grouped under the de-regulation umbrella. Section 3 of the Act "provides a new power to enable the Secretary of State to require certain companies to publish information about their payment practices". Provisions to report generally in the Annual Report on things like treatment of suppliers existed already but these provisions significantly extend the requirements.

In December 2014, BIS published *draft regulations* on the new reporting requirement on payment practices and policies. BIS published a *summary of responses* in March 2015, together with an *indicative format for the report*. Following the 2015 general elections, the then Business Secretary gave a *speech* in which he confirmed the government's intentions to bring the relevant powers into force.

In June 2016 the then Small Firms Minister, Anna Soubry, replying to a written question:

> We are implementing a package of measures to support a cultural change to tackle late payment, including the Small Business Commissioner, the duty for large businesses to report on payment practices and support for the voluntary Prompt Payment Code. The Regulations to give effect to the duty to report will be laid for debate early in 2017.[32]

The full Government response to the Consultation can be found here.

The Reporting on Payment Practices and Performance Regulations 2017 were introduced in February 2017 along with the accompanying Explanatory Memoranda.

The key information requirements in the Order are:

> The information that companies will have to report on includes metrics such as descriptions of their standard payment terms and dispute resolution process and statements about their payment practices and policies, including availability of electronic invoicing and supply chain finance and membership of a payment code of conduct. Companies will also have to publish statistics about their performance for each reporting period, including the proportion of payments due in the reporting period which were not paid within the contractual payment period; the proportion of payments made in the reporting period which were made within certain time frames; and the average (mean) number of days taken to make such payments, which is calculated by adding the number of days it took to make all of the relevant payments and dividing this by the number of those payments.[33]

32 HC Deb 14 June 2016 W40643
33 Explanatory Notes

4. Impact of the legislation on late payment

4.1 Statistics

From the start there has been scepticism as to how willing small businesses might be to use this facility and how prepared they were to 'take-on' larger suppliers.[34] Most of the data available is of the survey variety and by different organisations and hence difficult to compare entirely accurately over time. In the years after the 1998 Act was passed there was some evidence that business practices had improved. The following written answers appeared in November 2000 and April 2001 respectively:

> **Lord Sainsbury of Turville:** Since its introduction in November 1998, we have consistently monitored the effect of the Act on payment times in the UK. We recognise that we are still at an early stage and the UK still has some way to go before we meet the example set by countries such as Sweden and Denmark but we welcome the findings from recent research. Research undertaken by the Credit Management Research Centre in October 1998, prior to the introduction of the legislation, reported that 45 per cent of customers were paying at or near the due date without being reminded.
>
> A more recent survey published in July 2000 shows that this figure has now risen to 60 per cent, identifying a reduction in the number of late payers in the UK since the introduction of the legislation. In addition, recent research published in the Grant Thornton European Business Survey confirms that the average payment period for sales invoices in the UK now stands at 45 days against an EU average of 54 days, identifying a continuing downward trend in UK payment times in recent years.[35]

And...

> **Ms Hewitt:** I understand the hon. Member is referring to the statutory right of interest legislation. We have continued to monitor payment times in the UK since the introduction of the *Late Payment of Commercial Debts (Interest) Act 1998*. Recent surveys have provided encouraging signs of improvement. Research published by Dun and Bradstreet last month shows that UK companies are now the second fastest in Europe for paying their bills on time. Although all national performances have improved since the previous surveys, UK companies produced the greatest improvement, identifying a continuing downward trend in UK payment times in recent years. In addition, a quarterly survey published by the Credit Management Research Centre in March 2001 indicated a continued improvement in payment culture with larger firms exhibiting the most improved payment behaviour.[36]

The figures were updated in February 2002:

> **Nigel Griffiths:** This Act is part of a package of measures that the Government have put in place to change the late payment culture

[34] for example, "Goliath gets his own back", *Daily Telegraph*, 29 October 2001
[35] HL Deb 30 November 2000 cc 169-170WA
[36] HC Deb 4 April 2001 c 212W

> here. The Credit Management Research Centre (CMRC) based at Leeds University has been monitoring late payment activity in England since 1998. The CMRC reports show that there has been a fall of almost 7.5 per cent. in the percentage of payments that are reported as being late by the businesses that they survey. This fall relates to the period between their first survey and the survey for the quarter ending June 2001.
>
> During the same period the number of debtor days for small businesses has fallen by almost 24 per cent. and the mean number of debtor days for all businesses has fallen by almost 20 per cent. Finally, the "European Business Survey" for 2001, produced by the accountants Grant Thornton, shows the UK as having a payment period almost a week (five days) shorter than the EU average (52 days).[37]

However, research from *BACs* the payments organisation suggests that the position remains poor for many small firms:

> Latest research from Bacs Payment Schemes Limited (Bacs) reveals that more than three quarters (76 per cent) of UK businesses are being forced to wait at least a month beyond their agreed contract terms before getting paid.
>
> The knock-on effect of this is that business owners have to make tough decisions in order to make it through the month. Some 20 per cent of directors, in companies that experience late payments, say they have taken a cut in salary in order to keep cash inside their businesses.
>
> Over a quarter (26 per cent) are having to use their overdrafts to make ends meet and one in ten are experiencing one or more of the following challenges every month: difficulties in paying staff on time, factoring invoices and difficulties paying regular bills. Some 23 per cent claim the late payment situation is forcing them to pay their own suppliers late.
>
> […]
>
> The average late payment burden shouldered by SMEs now stands at £31,901. This puts many SMEs perilously close to bankruptcy with £50,000 being the maximum that SMEs in the survey say they could bear before going to the wall. More worryingly, 25 per cent of SMEs state that £20,000 or less is enough to jeopardise their business prospects.
>
> Larger companies with 250 or more employees are faring little better. The Bacs research shows that the number of corporates affected by late payments has remained static (80 per cent) since the last survey in January 2014.[38]

The amount owed, and to whom, varies from year to year and it is difficult to isolate the impact of the financial and economic downturn from other factors which might affect firms' payment attitudes such as John Major's 'embarrassment' or fear of prosecution.

More recent survey data is shown below:

37 HC Deb 26 February 2002 cc 1120-1W
38 BACs press release; 16 February 2015

Outstanding sums owed by company size

	Company size by No employees		Average late payment
	<250	>250	<250
	£ billions		£'s
Dec-16	23.6	na	32,185
Feb-15	32.4	9.1	31,901
Jan-14	39.4	6.7	na
Dec-12	36.4	na	36,000
Dec-11	33.6	na	39,000

Source: BACS press release (various)

This shows that there has been some improvement in the overall sums but the picture is far from rosy as *BACs* comments in December 2016 reflect:

> The average late payment debt now stands at £32,185 which equates to a substantial £26.3 billion total across the 47 per cent of SMEs that say customers and clients stray beyond agreed payment terms.
>
> […]
>
> In the meantime, the effect of companies not being paid on time remains significant with just under a third (32 per cent) of SMEs impacted by late payments admitting they are forced to pay their own suppliers late. On top of that, 12 per cent of SMEs who experience late payments say it impacts on their ability to pay their own staff on time, while 20 per cent have difficulty paying business bills like energy, rates and rent.
>
> Some 29 per cent rely on costly overdrafts to make up for cash-flow shortfalls due to being paid late and almost one in five (19 per cent) SME directors say they are forced to make personal salary sacrifices in order to keep vital cash inside their businesses.
>
> And a third of those who experience late payments (33 per cent) say they are being kept waiting at least one month beyond their stated payment terms, with a quarter saying this can extend to over 60 days beyond agreed terms.[39]

The Federation of Small Businesses (FSB) which is very supportive of measures to improve late payment, has produced numerous papers on this subject. At the end of 2016 it produced Time to Act: *The Economic Impact of Poor Payment Practice*. Its 'Key Findings' were:

- 30 per cent of payments to UK small businesses are late.
- Average value of each late payment is £6,142.
- 37 per cent of small businesses say late payment causes cash flow problems.
- Ending late payments would have saved 50,000 UK businesses from failing in 2014.
- This would also increase the gross value added (a measure of economic output) to over £1 billion.

[39] BACs press release December 2016

5. External opinion

A Report by the All Party Inquiry into late payments in SMEs led by Debbie Abrahams MP, was published in July 2013. It made a number of recommendations but concluded that the problem of late payment had many strands to it and hence there was no single remedy likely:

> 5.6 On analysing and reviewing the evidence, the Inquiry has developed a number of recommendations to address the issues underpinning late payments, particularly unethical business practice from large companies and poor financial management practice from suppliers. There is also the recognition that a stagnant economy is compounding the effects of late payments and that more analysis of the macroeconomic effects of late payments is needed. Other recommendations are concerned with developing informal systems as well as statutory instruments to ensure small and micro businesses are paid on time and can thrive.[40]

The FSB provided written evidence to the Public Bill Committee considering the *Small Business, Enterprise and Employment Bill*. The evidence on late payment is shown below:

> Late Payments
>
> 1.4 The FSB believes it is imperative the Bill seeks to address the current imbalance of power that exists in the relationship between creditors and debtors. This would provide small firms with a clear legal justification if they decided to seek redress or reject certain terms.
>
> 1.5 Retrospective discounting is in breach of agreed payment terms, and is too often used by large companies to maintain their margins and in some cases expand their own business. As the large company can be a significant customer, the small business has little choice but to absorb the cost. We would like this practice to be prohibited, regardless of offers to offset the cost, for example through trade finance.
>
> 1.6 We hear too often of invoices being challenged near their due date. This can occur even under long payment terms. Where the debtor delays challenging an invoice until close to the due date, the small business can suffer from an unplanned reduction in cash flow. The disruption to cash flow can have severe knock-on effects to other creditors in the supply chain. We would therefore suggest that once goods or services have been received to the customer's satisfaction and the invoice is issued, a time limit should be imposed on challenging the invoice. We suggest that should be 21 days from confirmed receipt of invoice.
>
> 1.7 There is no justification for the practice of requiring payments to belong on a supplier list. This should be prohibited, not least on fairness grounds, but also for its potential implications on competition (larger firms having the greater potential to pay the upfront costs than smaller businesses).
>
> 1.8 The FSB would like to see a mandatory prompt payment code for larger firms included in the Bill in order to encourage a more rapid cultural change with regard to late payment. Compliance with the code has been limited, with signatories regularly

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> unilaterally extending payment terms, in some cases to 120 days, without any sanction or approbation from the Prompt Payment Council.
>
> 1.9 We support the measure included in the Bill which will allow the Secretary of State to force a business to provide an explanation if a payment is late, as it falls within our broader call for a more thorough and transparent reporting framework around prompt payments. Current reporting requirements only produce a 'snap shot' of a company's performance against a single point in the payment cycle. Furthermore, especially for larger companies, reporting is only made on a group basis, disguising the behaviour of subsidiaries' payment practices which may vary widely. This needs to be addressed to include group subsidiaries. The FSB awaits further details from the Government on how the Secretary of State's power will be used.
>
> 1.10 We would like to know what further measures the Government could put in place to minimise the costs and time associated with using the court system to enforce the contract terms that businesses must pay their invoice within 60 days, unless expressly agreed otherwise, such as for trade credit, and provided it is not unfair to the creditor.[41]

More commentary from the FSB can be found in its December 2016 Report Time to Act: *The Economic Impact of Poor Payment Practice*.

[41] Small Business, Enterprise and Employment Bill, PBC FSB Written evidence

6. Sources of advice

There are various sources of practical advice on the workings of the law and ideas for improved commercial practice available.

Departmental

Comprehensive guidance on the current law and practice is available on the Gov.UK website here.

Two websites offer advice on how to improve payment collection or cash management performance.

Industry sources

BACS

The BACs (electronic payments) organisation has "Top ten tips to avoid late payment" shown below:

1. Boost cashflow overnight
When you're paid electronically, the funds are cleared and available for use on the day they're received - earning interest immediately as you don't have to wait for a cheque to clear.

2. Be proactive
Always chase early. A polite call or email can often pre-empt a payment problem. Send a letter to suppliers encouraging them to pay you electronically (it's often used as an excuse, but some cheques do get lost in the post). Being proactive will help build relationships with your customers' accounts department.

3. Do your homework
Avoid risks when supplying new customers by running a credit check. There are many associations and independent bodies for example Companies House, which can provide status reports for a reasonable fee. This upfront insight is worth its weight. If you knew a company had experienced financial problems in the past, would you still give them 30 days credit?

4. Demand interest
Demand interest on late payments – you are legally entitled to it. And if you have customers who regularly pay you late, you should get familiar with UK business law as a matter of course. For information, go to late payment legislation. The onus is on you to resolve any payment dispute you find yourself in. Write first to bring attention to it, then follow it up with a call. If the customer ignores you and fails to formally dispute your invoice, then you could appoint a third party to pursue the debt. The County Court is another option. If the debtor ignores the claim here, you could consider applying for a judgement against them.

5. Act fast and save money
Our research suggests that transactions made using Bacs Direct Credit costs significantly less to process than a cheque payment.

6. Play to your strengths
Bacs Direct Credit saves time and money. Why waste time signing and paying in cheques when you can let a highly automated system take the strain? You're then free to focus on more productive issues.

7. They save, you save
Cheque stationery can be expensive due to the need to prevent cheque fraud. Bacs Direct Credit eliminates the cost of cheques and reduces postage and other costs.

8. Better payment terms
Save your own suppliers time and money by paying them using Bacs Direct Credit and settling your regular business bills by Direct Debit. This approach could help you negotiate better payment terms and avoid penalty charges on any overdue invoices or bills. You'll need their bank sort code, account number and account name. Ask for a copy of their paying in slip or request written confirmation from a company official on the organisation's headed paper to ensure all details are correct and to avoid fraud.

9. You win, we all win
If you get a reputation as a late payer, word will eventually get around. If all businesses use the tools at hand to settle accounts quickly and efficiently, the economy as a whole will feel the benefit with positive spin-offs all round. And why not reward your prompt payers? Discounts will encourage them and keep the money flowing in.

10. Be upfront about it
It makes sense to explain from the word go that you actively encourage automated payments. It's the best way to start any business relationship. Make sure you put your sort code and account number on all your invoices – and print 'Pay Me Direct' alongside. This saves time on payment reconciliation and queuing at the bank to pay in cheques. Our sample letter can also help, or you could download a Pay Me Direct stamp and include it on all your invoices to help encourage automated payment.

Payontime

The other source is a website managed by the Credit Protection Association which administers the Better Payment Practice Group's 'Payontime' campaign. Their website can be found here.