



Prompt Payment Policy, Corporate Law Reform  
Department of Business, Innovation & Skills  
1 Victoria Street  
London SW1H 0ET

By e-mail: [latepayment@bis.gsi.gov.uk](mailto:latepayment@bis.gsi.gov.uk)

2 February 2015

Dear Sirs

**GC100 response to BIS consultation paper - Duty to Report on Payment Practices and Policies**

I am writing on behalf of GC100 to respond to the above consultation paper.

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. There are currently over 125 members of the group, representing some 81 companies.

Please note, as a matter of formality, that the views expressed in this letter do not necessarily reflect those of each and every individual member of GC100 or their employing companies.

**General Observations**

GC100 welcomes the opportunity to respond to this consultation and is certainly supportive of the government's objective to support small businesses by building a responsible payment culture in the UK. We agree that seeking to achieve this objective by increasing transparency through company reporting is preferable to imposing statutory restrictions or penalties that would impact freedom of contract for businesses (large and small).

We firmly believe that addressing the issue of late payment cannot be achieved through prescriptive regulation that would lead to reporting, at a significant administrative cost, of high level information that would require considerable care and explanation to interpret. Rather, this objective would be best achieved by following a principles-based approach and encouraging a broader change in payment culture. GC100 supports the principles of paying suppliers on time; giving clear guidance to suppliers; and encouraging good practice, as articulated by the Prompt Payment Code (the 'Code').

We would suggest that adherence to the Code be viewed as the 'gold standard' of payment practice and that a simple statement by a company, confirming that they have been granted and maintained their status as a Code signatory, would be a clear and uncomplicated form of disclosure for suppliers.

It is noted in this regard that suppliers have a clear route of escalation, via the Chartered Institute of Credit Management, to challenge the status of any Code signatory.

Members of GC100 have considered the detail of the proposals outlined in this consultation and have identified some areas where it would be very difficult for companies to comply with the suggested disclosure requirements from a practical perspective. We are extremely concerned that implementation of the proposals in their current form would result in a significantly increased administrative burden, and increased costs, for large companies, without a corresponding benefit to small businesses.

We believe that any reporting requirement should:

- be simple for businesses to complete;
- respect businesses' commercial confidentiality and negotiations with suppliers;
- focus on the principle of paying to term, rather than the length of payment terms; and
- avoid the creation of obligations that might put UK businesses at a disadvantage to its global competitors.

We ask that consideration be given to the above recommendation and the concerns and suggestions outlined below.

#### **Which firms should this requirement cover? (Qs 4&5)**

Our most significant concern relates to the proposal for businesses to report on payment practices at an individual company, rather than a consolidated level.

Within the structure of a large group, numerous subsidiary companies could qualify as 'large companies' under the Companies Act definition and, for the reasons outlined below, we strongly disagree with the suggestion that each such company should report on an individual basis.

Our view is that subsidiary company reporting would pose a significant risk of confusion amongst suppliers by publishing multiple payment practice reports for, what would likely be in their eyes, one business. Vendors may be unclear as to the individual entity with which they have contracted in the past (or are likely to contract with if tendering) and there is a real chance that they would refer to the wrong report as a result. By reporting at the group consolidated level, vendors will receive the best possible information as to the payment practices of the group as a whole, without the need for contract-specific knowledge.

We would also note that in the majority of cases, invoice and payment processing is managed at a group, rather than subsidiary level. The administrative burden of producing reports for each qualifying subsidiary would be significant for a number of our members and in some cases would require time consuming and costly systems and infrastructure updates. We do not believe that this increased burden for large businesses would result in increased transparency for small businesses.

***We would strongly recommend that payment practice reports be mandated at a consolidated level only and that 'large' companies and LLPs be exempt where their ultimate parent company is subject to the reporting requirement.***

In scenarios where payment practice and policy differs across the various business lines or

subsidiary companies within a group, we would suggest that the consolidated view be supplemented by additional figures or narrative on a voluntary basis. In some circumstances breaking down the consolidated figures would be of no additional value, but for some businesses that might be preferable:

e.g. the company average payment term may be 30 days, but within one business line the average might be 7 days, compared to a second business line with an average of 40 days; both of which may be in line with different industry practices.

Allowing businesses to supplement payment information based on their industry knowledge could provide valuable insight to their suppliers, but it would not be possible to mandate requirements appropriate to all industries and businesses. So long as such information supplements, rather than replaces, group level averages the overall performance of the business cannot be disguised but can be explained.

### **Content of the reporting requirement (Qs 7-12)**

As noted above, a potential solution would be to adopt a 'comply or explain' approach, pursuant to which large groups would be required to confirm their adoption of the Prompt Payment Code, or provide additional information on payment practices if they are not a signatory of the Code.

Of the proposed metrics outlined in the consultation our view is that the key metric is the proportion of invoices paid beyond terms and that the additional metrics do not necessarily add value beyond this. However, clarity would need to be provided on the definition of 'paid beyond terms'. Would this relate to invoices paid beyond the individual contractual terms or the business standard terms? We would suggest that an element of flexibility be incorporated within any such requirement.

For a number of our membership, monitoring performance against the payment term stipulated in each individual contract (very probably running to thousands of contracts in some cases) would present a significant administrative burden, particularly where contracts have been in place for long periods of time. We are keen to avoid unnecessary 're-papering' exercises or costly systems updates. We would therefore suggest that businesses either:

- report on the proportion of invoices paid beyond contractual terms; OR
- stipulate their standard term and report on the proportion of invoices paid beyond that term.

We would also seek clarification as to whether the reporting of payment metrics is intended to be focussed on payments made to UK suppliers, or all suppliers globally.

### **Frequency, format and location of reports (Qs 22-29)**

We feel strongly that the proposal to report payment practice metrics on a quarterly basis is unnecessarily frequent and would place a disproportionate reporting burden on large companies, whilst providing little incremental benefit to the intended recipients of the information.

***We recommend that disclosure of payment practice information be required on an annual, rather than quarterly, basis.***

Amongst our membership there are varying views as to the most appropriate location for payment practice disclosures. Some companies currently make voluntary disclosures within their annual CSR reports (or equivalent); some have dedicated sourcing and supplier websites; whilst others feel that the annual report would be the most appropriate location, as suppliers would likely use this as a key reference document for due diligence purposes.

The inclusion of the disclosure in the annual report would ensure that reporting is in a consistent location, however there would be auditing and verification costs associated with this. We also note that the previous requirement for annual report disclosure on creditor policy and practice (included in the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008) was repealed by the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, following conclusion of BIS's review of narrative reporting, which sought to materially simplify narrative reporting by companies.

The inclusion of such reporting on company websites, or in annual CSR reports which are readily available on company websites, may therefore be a more appropriate, and lower cost, option. We do however note that it may be more difficult for users to locate the report given company websites and CSR reports differ in structure.

Of more concern to GC100 members is the proposal for payment practice reports to be signed-off by an individual company director. We would highlight the already significant reporting obligations to which directors of large listed companies are already subject and would suggest that adding further volume and complexity to these obligations would not be a desirable outcome of this consultation. Our view is that other individuals within large companies would be better placed to approve this information, without the need for company directors to implement costly and administratively burdensome procedures for verification purposes.

### **Draft regulations (Q32)**

In addition to the comments outlined above, we would raise a specific concern with regards to section 4(1) of the draft regulations.

As drafted, this provision would appear to require information on each new contract entered into within the reporting period. This requirement was not addressed in the consultation paper and seems to be inconsistent with the general direction of the proposals. It is unclear why information on new contracts should be separated from information on existing contracts. We suggest that the requirement would create confusion amongst the large businesses disclosing and the small businesses trying to utilise the information.

We would therefore suggest that sub-section (1) of section 4 be removed from the draft regulations in its entirety.

We would reiterate the extent of our concerns in respect of the current proposal in this area and would welcome the opportunity to discuss these issues with you further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mary Mullally', with a horizontal line drawn through the middle of the signature.

Mary Mullally  
Secretary, GC100  
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