

Small Business Commissioner: Policy on Secondary Legislation - Response Form

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Organisation: Business for Scotland

Business for Scotland is a campaigning business network for ambitious, forward thinking smaller to medium sized enterprises. Our goal is to champion progress towards the creation of a Scottish society and business community that provides greater opportunities for shared prosperity. We are a passionate champion of policies and projects that will create sustainable business, economic and employment growth and are dedicated supporters of Scottish independence as a means to deliver our goals.

Address: 3-1 Sycamore House, 290 Bath St, Glasgow, Scotland G2 4LD

Please check a box from a list of options that best describes you as a respondent. This allows views to be presented by group type.

Respondent type	
<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input checked="" type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Do you have any other comments that might aid the consultation process as a whole?

Point 6.10 needs further clarification. What is meant by “having the most impact towards achieving...”. Most impact to what and for who? Please clarify.

We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes No

Paragraph 6.2 – 6.8

Question 1*: Do you agree with the proposals set out in paragraphs 6.2 - 6.7 for how and when to calculate a business's staff headcount to determine whether they are a 'small business' which can use the Commissioner's services?

Yes

No

Comments:

- 6.2** We believe that the staff headcount figure should refer to the number of full time equivalents and not the number of individual staff. This is because some businesses may employ a large number of part-time staff, this can result in that the business is registered as 50+ staff even though there are only ten staff working full time. These businesses will not be eligible to file a complaint to SBC which we feel is unfair.
- 6.3** Agency workers, secondees or partners should be calculated in as long as they work full - time equivalent hours.

Paragraph 6.9 – 6.11

Question 2: Are there any circumstances, instead of or in addition to those specified in paragraph 6.11, where it would be appropriate for the small business to complain to the Commissioner without first raising the issue with the respondent?

Yes

No

If the larger company has a proven track record in behaving in a way that is detrimental to small suppliers, such as late payment, and has not previously responded to or acknowledged past companies.

Where the smaller company is suffering significant cashflow issues as a result of late payment or contractual breakage that threatens the survival of the small business if there is any delay in settling the issue.

Paragraph 6.12 – 6.15

Question 3: What should be the time limit for complaints to be made to the Commissioner, should the Commissioner be able to extend it, and in what circumstances (other than those listed)?

The time limit should be set to 6 months for everything such as tenancy agreements, but not late payments. This is to avoid larger companies taking advantage of small businesses by dragging out the negotiations until the small company is unable to finance itself. Larger companies often promise payment at the last minute and then do not deliver payment until it is too late to complain to the commissioner. It is recommended that the 6 month time limit starts the 30 days after the invoice is issued or earlier if the payment terms agreed are less than 30 days.

For late payments, the time limit should be 3 months. Ideally this issue should be solved within 30 days to avoid financial complications for the smaller company. Larger companies understand that they may not have to pay its late payments to the smaller businesses if they have declared itself bankrupt.

The commissioner should be able to extend the time limit under the circumstances that have been listed.

Paragraph 6.16 - 6.17

Question 4: Do you agree that complaints referred to the Commissioner should meet the following requirements?

	Yes	No
a. Be made in writing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Include the date(s) of the matter complaint of	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Include confirmation by the complainant that they have previously communicated the issue to the respondent and given them reasonable opportunity to deal with it or their reasons if they have not done so	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. If the complainant wishes the Commissioner to extend the time limit for submitting a complaint.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Comment:

Email should be an appropriate method of complaint. A bespoke email address should be set up.

Paragraph 6.18

Question 5: Do you agree that the Commissioner should be able to dismiss a complaint in the following instances?

	Yes	No
a. The complaint is frivolous and vexatious	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The matter is more appropriately dealt with in another way, for example through the legal system, an ombudsman or regulator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The matter has not caused the complainant to suffer any financial loss, material distress, material inconvenience or other material adverse effect, or is not likely to do so	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The complaint has been remedied	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The complainant is seeking an outcome that the Commissioner does not have the power to provide (e.g. something other than a recommendation)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The matter has been subject to legal proceedings or adjudication proceedings or become subject to legal or adjudication proceedings	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The matter has been previously considered under the Commissioner's complaints scheme or by another complaints-handling body, ombudsman or regulator	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. There are other compelling reasons why it is inappropriate for the complaint to be dealt with under the Commissioner's complaints scheme	<input checked="" type="checkbox"/>	<input type="checkbox"/>

No comment.

Paragraph 6.19

Question 6: Do you think there are specified circumstances in which the Commissioner should be able to dismiss a complaint, which are not covered by the general factors listed above?

Yes
No

Comment:

If a complaint is not sent in within the time limit, or if a person has not submitted the complaint correctly, the Commissioner should be able to dismiss a complaint.

Paragraph 6.20

Question 7: Do you agree that the Commissioner should be able to fix and extend time limits for any aspect of the complaints handling process?

- Yes
- No

Comment:

Without the ability to set a time limit, larger companies may use the SBC process to delay payment. The SBC thus needs the power to both enforce companies to pay as well as the ability to enforce time limits.

Paragraph 6.21

Question 8: Do you agree that the Regulations should require the Commissioner to notify a complainant if their complaint is out of scope or dismissed, and explain the reasons why it will not be considered?

- Yes
- No

Simply rejecting a complaint without explanation will undermine SME confidence in the service.

Paragraph 6.22

Question 9: When a complaint is not relevant, or dismissed, should the Commissioner be allowed but not required, to notify the person against whom a complaint is made?

- Yes
- No

Comment:

If a complaint has been dismissed, the SBC should not inform the company against whom a complaint has been made. The company should not be contacted as this could hurt any ongoing relationships between the two businesses. Informing the respondent about a complaint that is not relevant is thereby counter productive and would also defeat the purpose of the SBC and would result in less SME's using the service.

Paragraph 6.26 - 6.29

Question 10*: Do you agree that the Regulations should require the Commissioner to take into account the conduct, behaviour and practice of the parties but that examples of these should not be listed in the Regulations, leaving the Commissioner to decide what to include in this consideration?

Yes

No

Comment:

We expect the most appropriate person to be appointed as Commissioner. A person who can be trusted, makes un-biased judgements and is seen as suitable for taking decisions in his/her discretion.

Paragraph 6.30 - 6.37

Not applicable due answering 'Yes' in the previous question.

Paragraph 6.38

Question 12: Do you agree that the Commissioner should consider the relative bargaining position of the parties and the use of that position by the stronger party to the detriment of the weaker party when considering what is fair and reasonable?

Yes

No

Comment:

We must consider the economic powers of the stronger party and that the smaller business have fewer resources to handle a complaint. We should not let the bigger party exhaust the smaller party by dragging out negotiations so that they are unable to continue their work.

Paragraph 6.39 – 6.46

Question 13: Do you agree that the Commissioner should consider the impact of the act or omission when considering what is fair and reasonable but that particular impacts should not be listed in the Regulations?

Yes

No

No Comment.

Question 14: If you think particular types of impact should be listed, which should be included in the Regulations?

No. Ticked 'Yes' in Question 13.

Question 15*: Are there any other factors that should be included in the Regulations (in addition to the four proposed)?

Yes

No

No comment.

Paragraph 6.41

Question 16: Do you agree that the Regulations should not list specific types of cases nor therefore corresponding additional factors that the Commissioner must take into account when determining what is fair and reasonable in those specific types of cases?

Yes

No

Comment:

Commissioner needs flexibility to address cases that come with standard practices. We expect them to use their judgement whether a case is suitable for mediation. Once again, the option is otherwise to prescriptive.

Question 17: If you answered No to Question 16, what should the specified circumstances be? And what should the additional factors be in relation to those circumstances?

No comment. Answered Yes in previous question.

Paragraph 6.42 – 6.45

Question 18*: Which factors (including but not confined to those listed below) should the Regulations set out for the Commissioner to take into account when considering whether to name respondent in a published report?

- a. Any representations made by the respondent or the complainant as to whether the respondent should be named
- b. Any information or evidence that the respondent knowingly or deliberately misled the complainant
- c. Any information or evidence that the respondent knowingly or deliberately misled the Commissioner
- d. Any information or evidence that the respondent used undue influence, pressure or intimidation tactics
- e. Any information or evidence as to risk of personal harm to any staff of the respondent
- f. Any information or evidence as to the seriousness of the harm caused to the small business by the respondent
- g. Any information or evidence as to the respondent's knowledge of the harm caused to the complainant
- h. Whether naming the respondent is likely to deter similar acts or omissions in the future
- i. Whether naming the respondent is likely to encourage more businesses to follow good practice of a respondent
- j. Whether naming the respondent is likely to have adverse consequences for the supplier
- k. Whether the respondent has helpfully engaged with the Commissioner Complaints process

No Comment.

Paragraph 6.46

Question: 19: If you disagree that there should be no specified circumstances that give rise to additional factors that the Commissioner must take into account when deciding whether to name the respondent, what should these circumstances be? And what factors should the Commissioner consider?

We have agreed on all statements in Question 18.

Question 20: Is there anything else you consider the Regulations should cover or do you have any comments on the consultation?

We would appreciate if the following comments and amendments are taken into consideration:

- A. **That the Commissioner role should be highly devolved and not only have an office in London.** Instead, offices should be set up in Scotland, Wales and Northern Ireland. Ideally, offices should also be set up in different regions in England - East Midlands, North West, South West et cetera. A London based office is likely to prioritise complaints differently to a Welsh, Scottish, Northern Irish or North West English Commissioner. Therefore having highly devolved Commissioner offices is vital to ensure unbiased decision making. This has been accomplished in Australia which has different Commissioners across the country representing the various regions - Western Australia, South Australia, New South Wales and Victoria.
- B. **The devolved SBC's in the nations of the UK can be fully autonomous or report to the UK SBC dependent on the wishes of the devolved legislator EG the Scottish Parliament. English regions should report to SBC whilst SBC in devolved nations should only be required to collaborate with UK's Business Commissioner.** As information overlaps between organisations which may be located throughout the UK, the Scottish Government should encourage collaboration between the SBC and an existing organisation such as Scottish Enterprise. Each Government needs to decide how best to set SBC up within their framework and within UK legislation.
- C. **Filing a complaint to the Commissioner should be marketed as a low cost pre-litigation process.** It should become a norm that supply contracts state referral to the SBC as the first step in conflict. This is to avoid complications between the supplier and their customer. The SBC should encourage and promote this form of referral in suppliers' contracts.
- D. **The Commissioners determinations should be legally binding.** If decisions are not binding large companies may use the SBC process to extend or defer payments. Large businesses may spend 6 months in mediation and then not pay. This would be considered wasteful for both small businesses and the SBC. In addition, it would also discourage small businesses to file a complaint to the SBC.
- E. **Late payments should be prioritised.** Complaints, other than late payments, should be dealt with on a 'first come first basis'. Small businesses may be experiencing

cashflow crisis when they complain about late payments, hence such complaints should be acknowledged and responded to as a priority.

Gordon MacIntyre - Kemp
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for Scotland