



## SMALL BUSINESS COMMISSIONER: STATUTORY REVIEW 2023

Issued 27 April 2023

ICAEW welcomes the opportunity to submit evidence to **the Statutory Review of the Small Business Commissioner (SBC) launched on 15 February 2023**.

For questions on this submission please contact us at [representations@icaew.com](mailto:representations@icaew.com) quoting REP 35/23.

- ICAEW members involved in businesses across different regions and sectors of economy, have limited understanding of the SBC's role and responsibilities. The SBC should prioritise improving awareness among the SME community. The business advisory community are an important channel in doing this.
- ICAEW members report that small businesses remain reluctant to make complaints against customers owing to fears of repercussions, both with existing contracts and the ability to secure new ones. There is support for broader powers to undertake investigations following anonymous information as a solution to address this.
- The SBC should maximise the use of existing intelligence, as well as publicly available disclosures on payment practices, to target its activity and focus engagement on those sectors and companies where there is evidence to suggest poor performance or problems.
- The SBC's work on promoting prompt payment is as, if not more, important as tackling late payment. The only long-term solution to improving payment practices in the UK is to drive cultural change, both in how businesses operate and in the expectations of society more widely. The SBC can learn from the success of other campaigns to promote this change.
- ICAEW members highlight two areas where the SBC can actively work with larger businesses to change payment behaviours: (i) clients embracing modern technology to pay suppliers on time; and (ii) improving management of capital and cashflow.
- The UK Government consulted in 2020 on sensible proposals to widen the role and powers of the SBC. The feedback already received as part of this exercise should be used to take forward any expansion of powers.

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## RESPONSES TO SPECIFIC QUESTIONS

### ***How aware do you think businesses are of the role of the Small Business Commissioner? How aware would you say you are of the SBCs role as set out in this statutory review document?***

1. ICAEW as an organisation has regular interactions with the SBC and supports its work in seeking to improve payment practices in commercial transactions, and in improving awareness among small businesses of the alternative dispute resolution procedures and their use.
2. In our interactions with ICAEW members running, or operating in, businesses across different regions and sectors of economy, we continue to find a wide range of awareness of the SBC. In most cases, we find little to no awareness of the body. Where members are aware of the SBC, they had limited knowledge of what its role and responsibilities are. This lack of awareness was reported as a factor in them having little to no interaction with the SBC.
3. The SBC should prioritise improving awareness of its role and functions among the SME community to ensure that this does not act as a barrier to small businesses engaging with its work. This process could include reviewing how the SBC engages with business and professional services representative bodies to enhance awareness among SMEs, and to ensure the business advisory community understand the role and responsibilities of the SBC in supporting their clients.

### ***In your view, what impact, if any, has the SBC has on your business relationships (e.g. with business suppliers or business customers), and/or business relationships between business suppliers and business customers in general?***

4. ICAEW believes that the SBC has had limited impact on business relationships between suppliers and customers overall. This is a consequence of the general lack of awareness we have found among our members in the business community, which would restrict the ability of the SBC to influence these relationships.
5. The SBC has had no impact on ICAEW's business relationships as an organisation.

### ***Do you think that resolving a complaint between business suppliers and business customers has become easier or harder since the establishment of the Small Business Commissioner? Why?***

#### ***What do you believe has been the impact of the SBC on payment issues?***

6. ICAEW believes that the limited awareness of the role and responsibilities of the SBC means that there has been little change in the difficulty associated with resolving complaints between business suppliers and business customers. In our engagement with members operating in business, they report that late payment is commonplace with the suggestion that "everyone pays everyone at least a few days late", and that the wider culture of larger businesses moving towards paying their suppliers more promptly had stalled, if not gone backwards.
7. ICAEW's Business Confidence Monitor for Q1 2023, published on 20 April 2023, found that nearly one in five businesses were finding late payments a growing challenge. This was around the same level as at the end of Q4 2022, and a significant increase on a year ago.

8. Given severe economic shocks which have taken place since the establishment of the SBC, it is possible that payment issues have become worse. However, this outcome would not be a consequence of the work of the SBC. We believe there is a strong argument for the SBC exploring what information it holds on this issue, as well as publicly available data, and provide updates in its annual report.

***In your view, is the role of the Small Business Commissioner sufficiently clear? How would you explain the role?***

9. ICAEW considers the role of the SBC to be sufficiently clear: to support small businesses resolve disputes and unpaid invoices, to provide general business advice and information to SMEs, and to promote awareness of alternative dispute resolution services.
10. We believe the priority remains to improve the awareness and understanding of the SBC's role and responsibilities among the SME community (see Paragraph 2).

***What else could the SBC do to improve payment culture?***

11. The work which the SBC does to drive a prompter payment culture in the UK economy is as, if not more, important than its role supporting SMEs with late payment. ICAEW members regularly report a growing trend for larger business to stretch payment terms, and the growing use of 90-day payment terms. This practice can be particularly harmful to SMEs, and especially sole traders, who are particularly sensitive to cashflow challenges.
12. There have been successful campaigns to drive behavioural change among UK corporates. One highlighted by ICAEW members is the Living Wage Campaign, which enhanced the visibility of those businesses who improved their remuneration practices. The SBC should engage with such groups to learn from the success of other campaigns.
13. The SBC also has a role in supporting larger businesses improve their own practices as part of making the transition to a prompter payment culture. Two issues which ICAEW members highlight as possible areas for the SBC to work on are (i) encouraging companies to increasingly adopt modern payment systems to support the payment of suppliers on time, and improving their management of capital and cashflow so large businesses have the money available to make payments. Both of these topics also form part of the European Commission's active consultation on promoting a culture of prompt payment.

***The SBC receives fewer complaints than expected. What do you consider are the primary reasons why small businesses tend not to raise complaints with the SBC?***

***Would the introduction of broader powers for the Commissioner to investigate issues on their own initiative, or as a result of anonymous information, help address the late payment issues faced by small businesses? What else would encourage you or business in general to raise an issue with the SBC?***

14. ICAEW believes that the limited awareness of the role and responsibilities of the SBC is a reason why fewer complaints have been received than expected.
15. Based on regular engagement with our members in business, ICAEW understand that even once aware of the SBC and how it can investigate complaints, small businesses remain reluctant to make complaints against customers for late payment. This is owing to concern that if their name becomes known to existing and potential clients as a complainant, then the supplier will be unable to secure new business and may lose existing work. This concern is especially prevalent in those sectors where a small number of large businesses represent a high concentration of possible clients.
16. If concern over repercussions is the main barrier to SMEs making complaints, then there is support for broader powers to allow the SBC undertake investigations following anonymous information if this would help address concerns SMEs have around possible repercussions from making complaints. If this policy option was pursued, then it would need to be implemented proportionately. In ICAEW's engagement with members, those supportive of

this proposal argued that it would need appropriate checks and thresholds against its use, given the potential use as a mechanism for vexatious complaints against clients.

17. Alternatively, we believe there is more which the SBC can do with the intelligence it already receives from complainants, as well publicly available information – for example, through payment practice disclosures – to better identify those sectors and companies where problems lie.
18. The SBC should explore options to provide more detail on the nature of payment culture within the UK. For example, in addition to its annual report highlighting the geographic and sectoral profile of where it is receiving complaints, the SBC could provide thematic information on the complaints themselves. The SBC could also have the power to review those sectors where it is received the most complaints and engage with representatives and trade bodies to cascade guidance to members and the sharing of good practice.
19. The SBC's website currently provides businesses with information on how to avoid unpaid invoices – for example, what should be included on an invoice, and when to raise one. However, it doesn't currently provide guidance on what to do when an invoice remains unpaid. ICAEW believes this would be useful for businesses and help ensure that businesses are able to take steps to resolve unpaid invoices before having to making a complaint to the SBC. This could include providing a downloadable template that suppliers can send to late paying clients, including reference to the prompt payment code.

***Please provide any additional feedback on the scope of the SBC's powers, including the extent to which you consider it enables or restricts the SBC to fulfil the Commissioner's purpose.***

20. The UK Government undertook a consultation into the scope and powers of the SBC in Q4 2020, the feedback from which is still being considered.
21. The consultation outlined proposals to strengthen the powers of the SBC, for example having the power to issue a binding monetary award or payment plan in connection with a complaint where there are adverse findings in relation to the respondent. Ministers also consulted on the SBC being able to undertake reviews on behalf of the Secretary of State with recommendations on the impact and effect of relevant legislation, policies and practices, on small businesses.
22. ICAEW welcomed these new proposals when they were announced, arguing that they would help ensure small businesses in the UK were paid on time, create a responsible culture of prompt payment, and safeguard the existence of many small businesses across the country. This consultation, and the feedback already received by government, should form the basis of any planned expansion in the powers of the SBC.