

# Tackling poor payment practices and raising awareness of ADR tools

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In the latest alternative dispute resolution series article for Construction Law, **Kirsti Olson** looks ahead to the results of the government's Payment and Cashflow Review.

Late payment in the UK construction industry is a perennial problem, particularly so for the many small businesses in our industry. The UK construction industry is now increasingly dependent on the innovative solutions that small businesses offer. However, longer payment cycles are a distraction, lengthy credit periods need to be financed, lack of cash prevents growth and businesses can find themselves at risk.

The UK government has tried to tackle this issue many times. Some statutory provisions have been put in place. *The Housing Grants, Construction & Regeneration Act 1996*, for example, reformed payment practices in the industry, introducing notice regimes and banning "pay when paid" clauses. The Late Payment of Commercial Debts legislation enables suppliers to claim debt recovery costs and charge interest on late payments.

These statutory measures have undoubtedly had a positive effect. However, reports in 2016 from the Federation of Small Businesses and the European Commission conclude that few small businesses take advantage of them. This seems to be for two reasons: either they do not know the measures exist or they do, but are afraid to use them.

Softer remedies have also been explored. For example, under regulations in force since April 2017, large businesses have to report the average time they take to pay their suppliers. This information is published by the government online. Businesses can therefore make informed decisions on who to contract with. In addition, the government introduced the Prompt Payment Code. This allows businesses to sign up voluntarily and commit to paying suppliers with 30-60 days. Many larger businesses have indeed signed up.

The government also set up the Office of the Small Business Commissioner (OSBC). Established under the **Enterprise Act 2016** and operating UK-wide, its remit is to tackle late payment and poor payment practices in the private sector.

The OSBC provides free advice to businesses on recovering payment, can signpost small businesses to [alternative] dispute resolution services and, where a party makes a direct complaint, propose non-binding recommendations on how to resolve payment disputes.

Clearly, however, this is not enough. On 3 December 2022, the government's Payment and Cashflow review was announced to consider the following:

- **Transparency and advocacy:** how the OSBC (and other government entities) can hold businesses to account for their payment practices and how published data can be better used to improve transparency and payment performance in specific sectors.
- **Progress by business sectors:** compare practices across different sectors to see whether positive practices in one industry can be employed in others.

- **Culture and impact of late payment:** consider the impact of business behaviours and how the government and others can help to create a stronger culture of responsibility.
- **Existing government levers:** whether existing measures can be improved and how they might work better together.
- **Finance and technology:** how lenders could remove barriers to finance and how technology could be better used.
- **Awareness:** how small businesses can become more aware of the tools available.

On 15 February 2023, the government also issued a call for evidence on the OSBC's role. Timely payment saves money and should lead to lower prices, greater competition, increased trust and collaboration, and incentivise innovation.

A conclusion to the review is expected at some point in 2023 and should help raise awareness among small businesses of the benefits of ADR.

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This article was first published in Construction Law on 2 May 2023 [here](#).

## Your Key Contacts



**Kirsti Olson**

Partner, Edinburgh

D +44 33 0222 1922

[kirsti.olson@dentons.com](mailto:kirsti.olson@dentons.com)