

Department for Business, Energy & Industrial Strategy

Creating a responsible payment culture: A call for evidence in tackling late payment

ACE Response

November 2018

Overview

On 4 October 2018, the Department for Business, Energy and Industrial Strategy (BEIS) launched their consultation on [Creating a responsible payment culture](#). BEIS sought out views and experiences on the impact of unfair payment practices, and proposals for measures to create a more responsible payment culture.

In relation to unfair payment practices, our members regularly raise the issue of late invoice payments, and the impact it has on their businesses. Each year the Association for Consultancy and Engineering (ACE) prepares a Benchmarking study, which is the only in-depth analysis of the health of the consulting and engineering industry in Europe. Launched in 2006, the study explores industry trends and participants are provided with a company-specific comparison. A regular topic covered in the study is late payments.

At ACE we recently conducted our annual benchmarking survey which gave rise to some interesting results on the current state of play with regard to fair payment and also where other policy decisions are influencing the behaviour within industry. Some of the key headlines relating to fair payment specifically are quite telling:

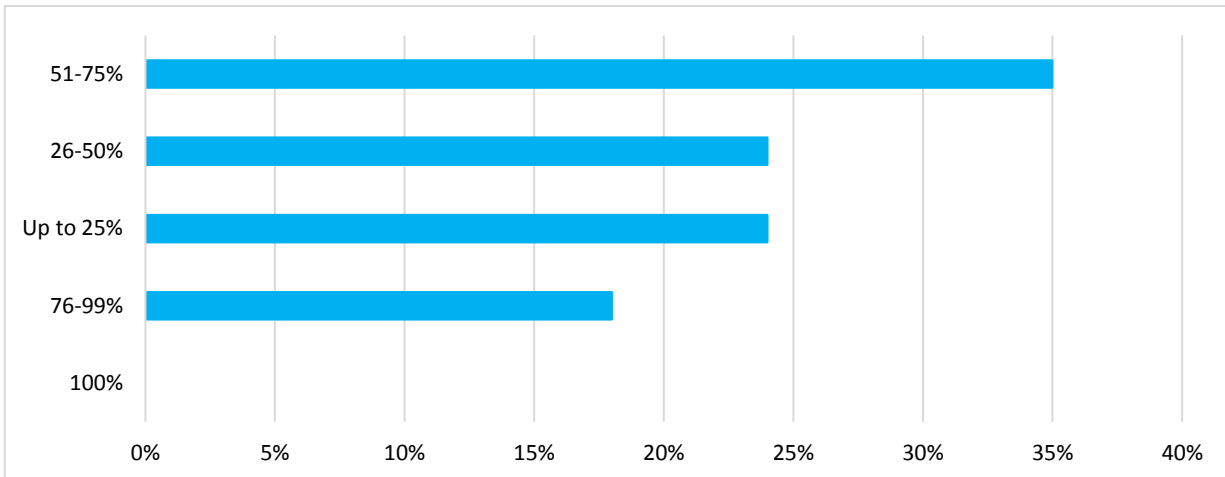
- The consultants surveyed spent as much time chasing late payments as they did bidding for new work in 2017/18.
- The average debtors' days were 75.4 days which is quite a contrast from what is reported in the statutory reporting.
- In one case, 80% of an SMEs revenue was paid late outside the contract terms.

The ACE Legal and Commercial Group leads on late payment issues at ACE. The group examines legal, commercial, liability, risk and insurance issues that our members face and helps ACE to shape support to members in these areas. The group often runs roundtable events bringing together ACE members and affiliates to discuss late payments and issues around limited liability with clients. Representatives from the group also meet with the Prompt Payment Code Compliance Board regarding poor payment practices and fair and prompt payment for ACE member companies. In 2019 the group is looking to produce a report on fair contracting and procurement to tie into ACE's future of consultancy programme.

ACE surveyed the views of its members (mainly Small to Medium Enterprises) who have contributed to this response. The responses do include some data taken from large consultancies and ACE would be willing to differentiate the data if this is of use to the department.

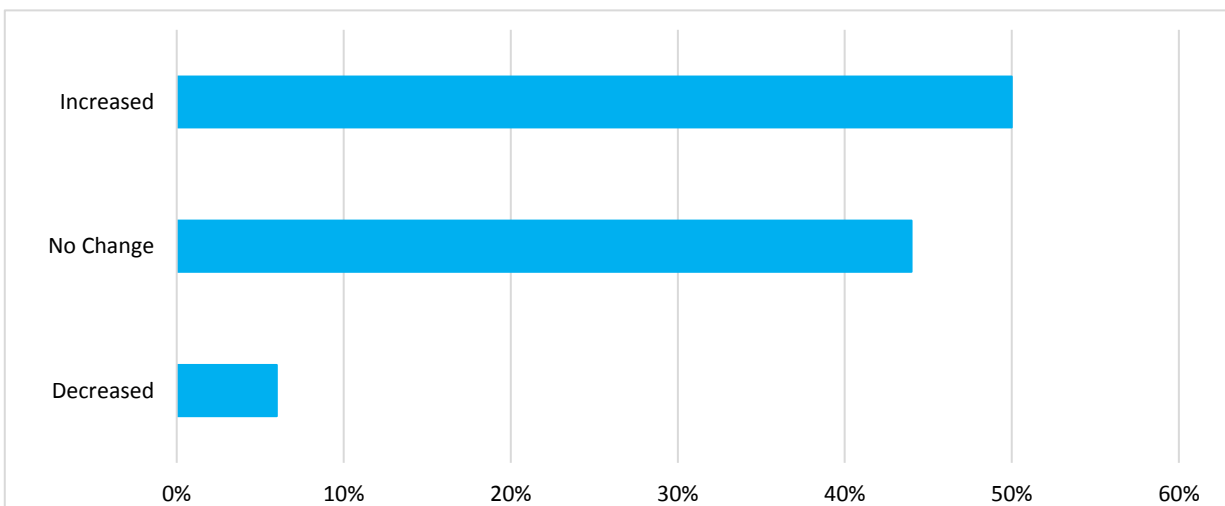
Response to consultation questions

What percentage of payments from businesses and organisations that you supply to are late?



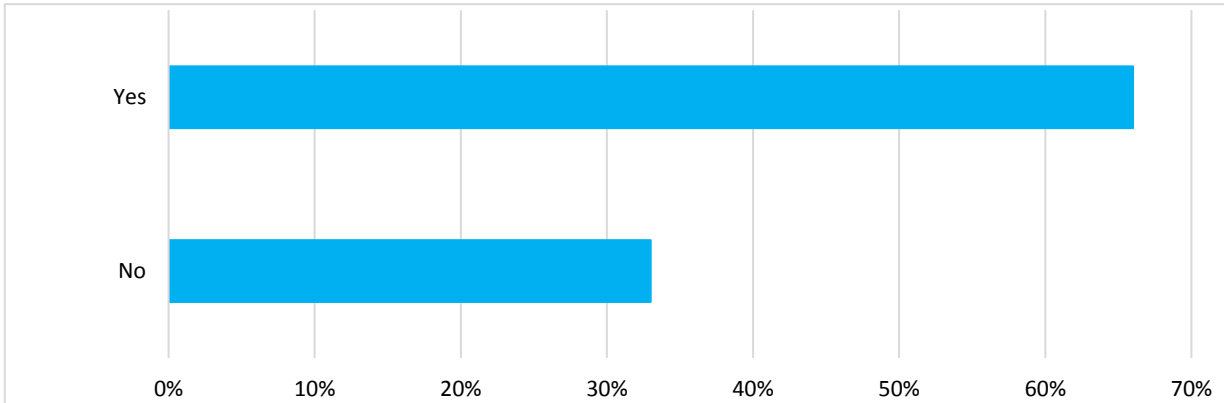
The largest group of respondents suggested that over half of their payments received were late with a further 18% suggesting that 76-99% of payments received were late.

How has the proportion of payments made late changed over the past three years?



While ACE's 2018 Benchmarking study showed a slight improvement over the results in 2017, worryingly, half of respondents to this consultation suggested that the culture of late payments had become worse over a three-year period, with another 43% suggesting that there had been no change either way. Only 7% felt that the portion of late payments had decreased over the past three years.

Do you research the payment performance of a business before entering into an agreement with them? If yes, please provide details how you research this.

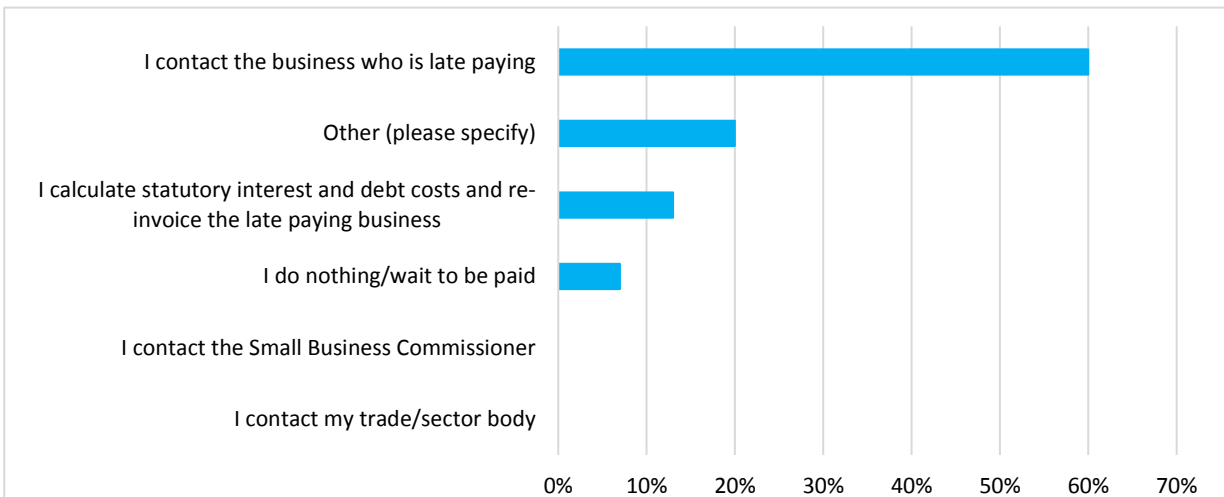


Two thirds of those surveyed undertake research into the payment performance of businesses prior to entering into an arrangement with them.

Respondents comments on what research they undertook fell into four broad categories:

- Using the services of a credit checking agency;
- Word of mouth;
- Previous experience; and
- General background check.

What, if any, action do you take when you are paid late? Please tick all that apply.



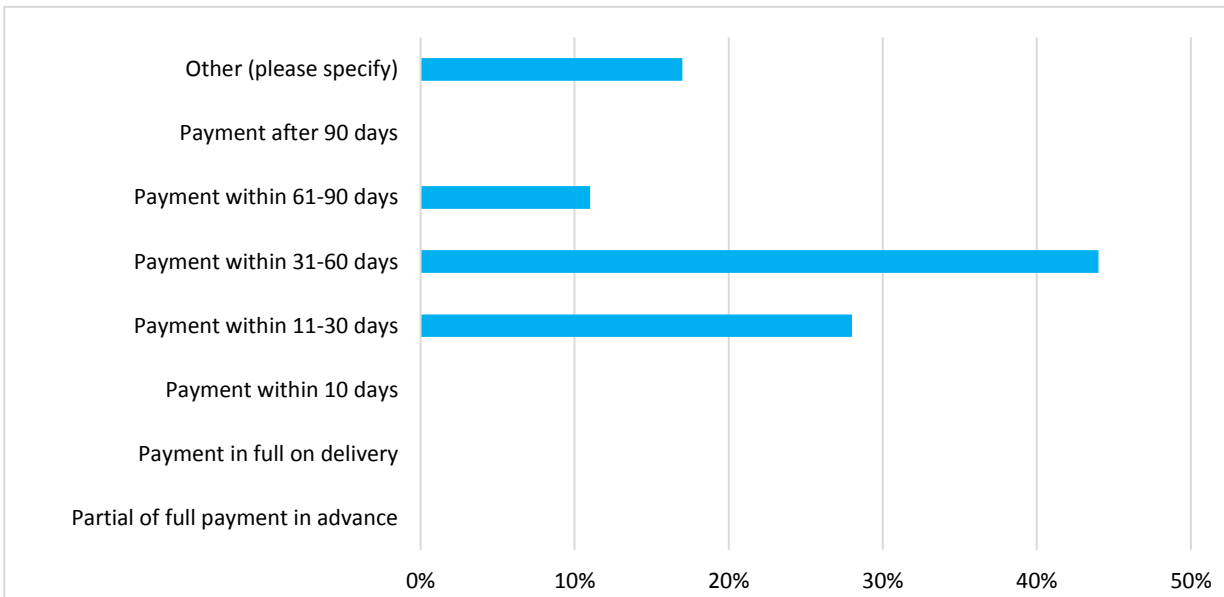
Responses indicate most companies take proactive action and make contact with the business who has failed to pay on time.

Other responses included withdrawing services until payment is made or referring the debt to an external collection agency or firm, although this is pursued as a last resort.

How often do you experience invoices that are never paid?

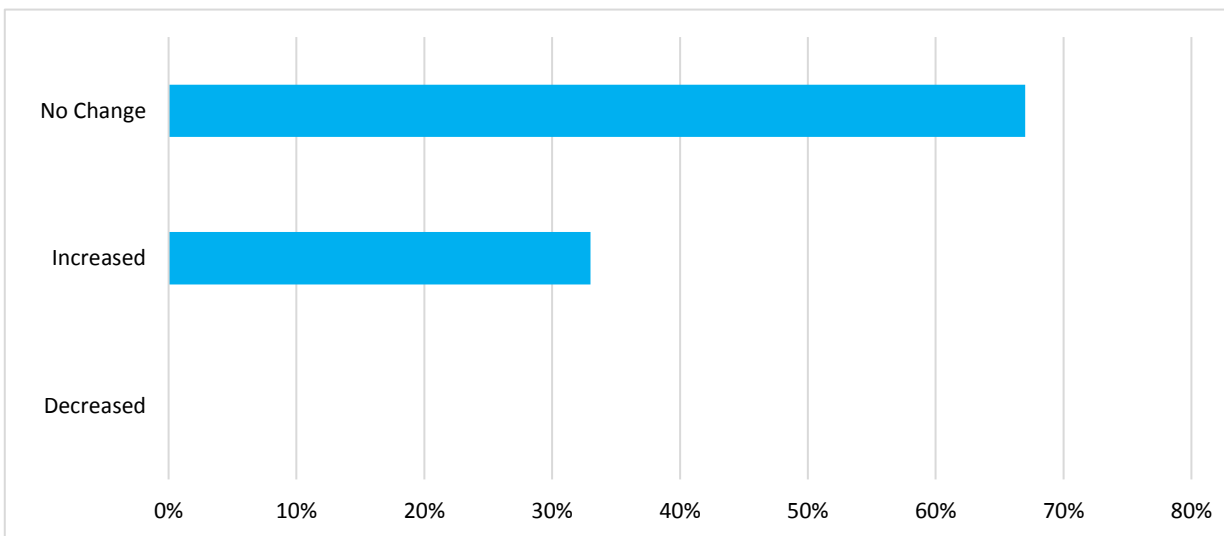
Most responses indicate that it is very rare for an invoice to never be paid. Most of the time invoices that remain unpaid are associated with when client’s businesses have closed down.

On average, what is the typical payment term offered by businesses you supply to?



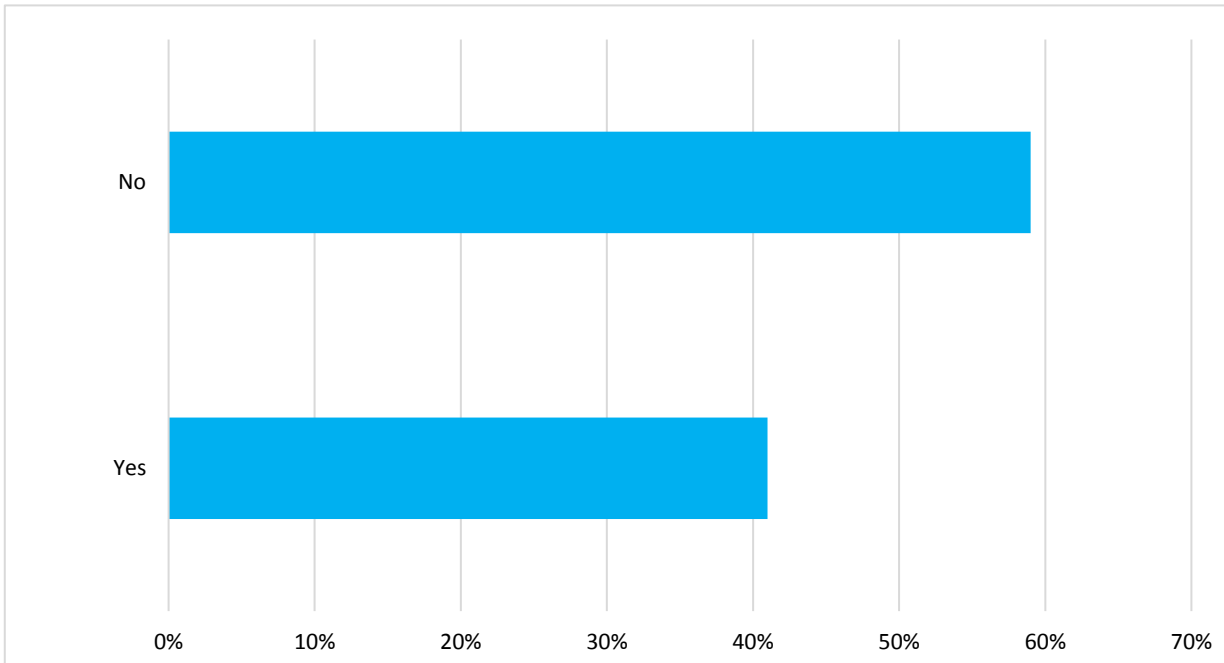
Most respondents offer payment terms of 31-60 days, with some asking for payment between 11-30 days. The fewest respondents asked for payment within 61-90 days, while none required payment beyond 90 days, within 10 days, or in full on delivery.

How have the length of these terms changed over the past three years?



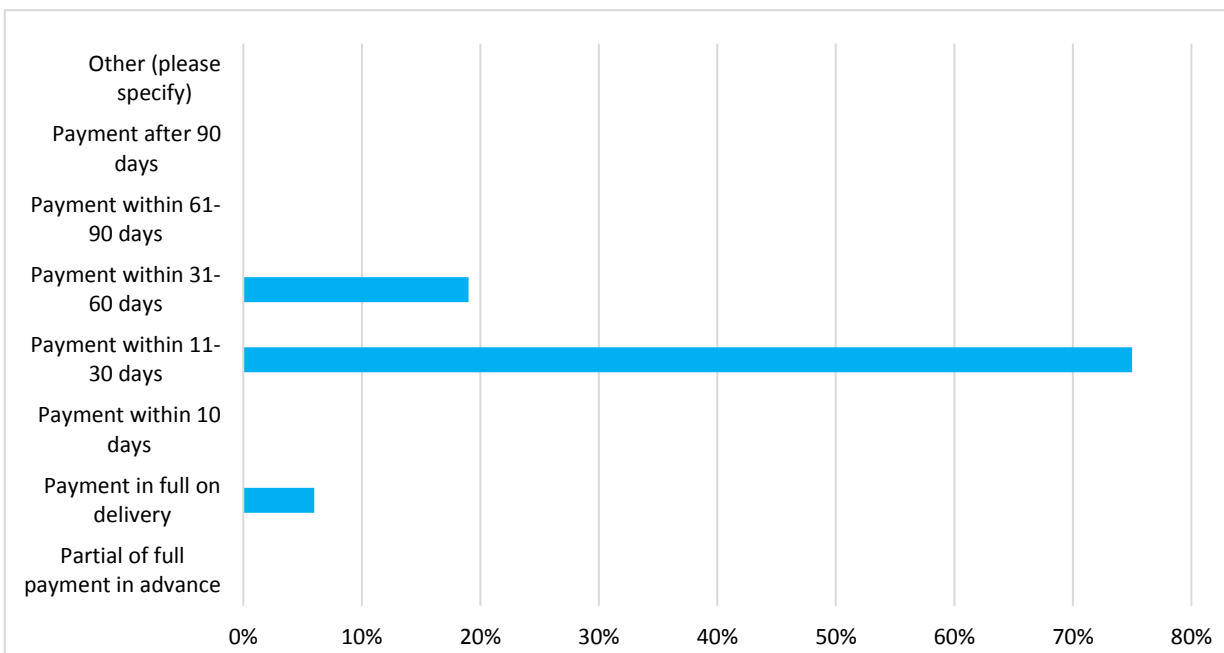
Most respondents felt there had been no change in these terms over the past three years with a third suggesting that the length of these terms had increased.

Do you feel able to negotiate and/or challenge payment terms?



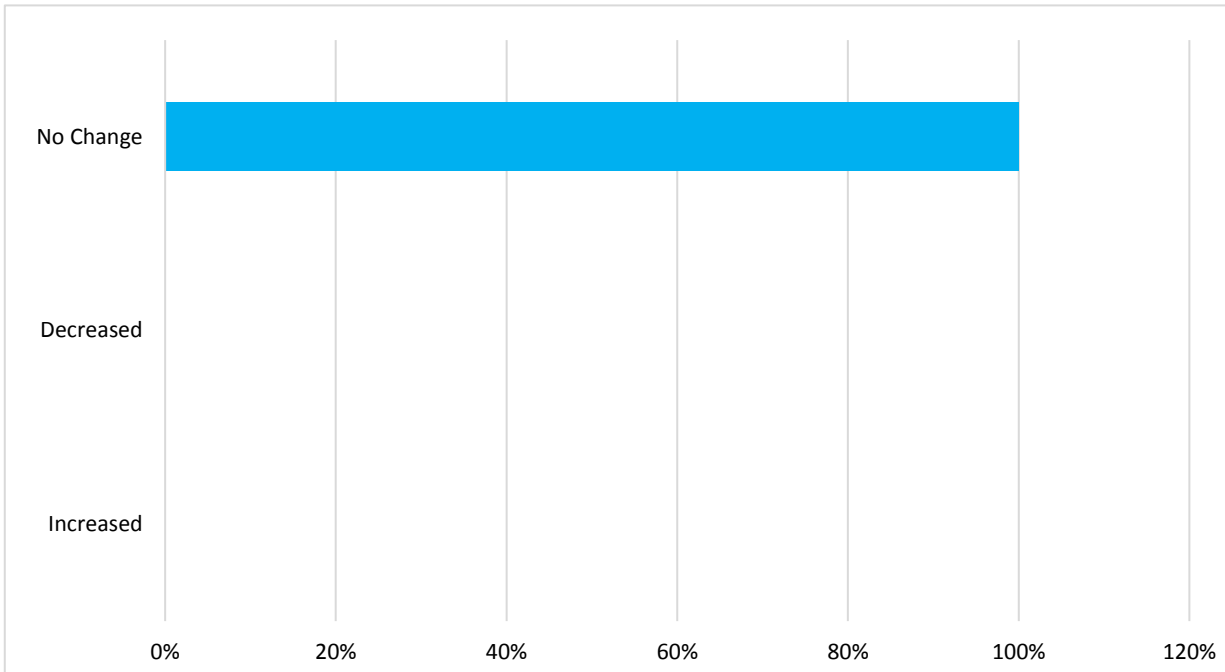
When it comes to negotiating terms of payment, the majority of respondents felt they weren't able to challenge these terms, with only just over 40% feeling comfortable to challenge terms.

On average, what is the typical payment term you offer your suppliers?



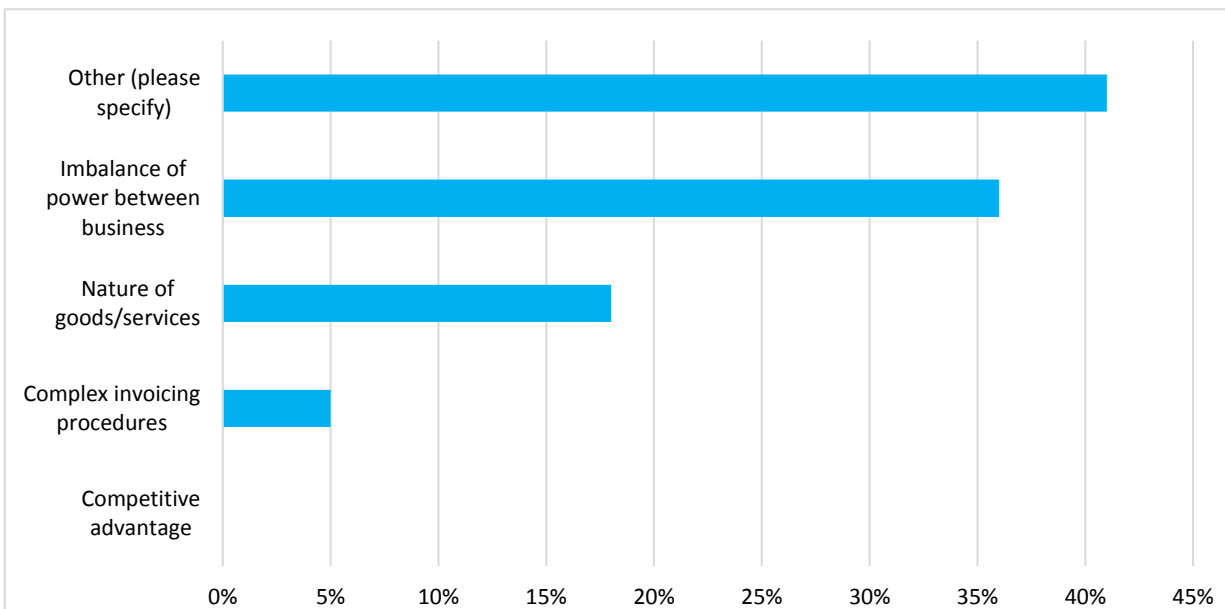
The majority of respondents offer terms that were between 11 and 30 days, with fewer offering terms that were between 31 and 60 days. A small percentage of respondents offered full payment on the delivery of a project.

How have the length of these terms changed over the past three years?



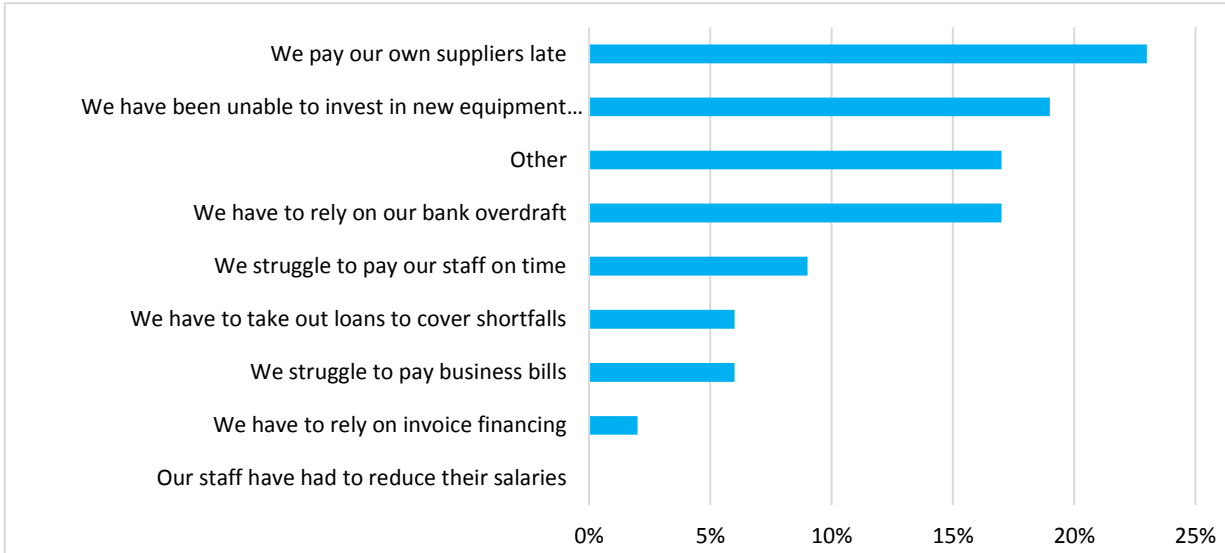
All respondents to this question said they have not altered their payment terms over the past three years.

What do you think are the reasons for long payment terms?



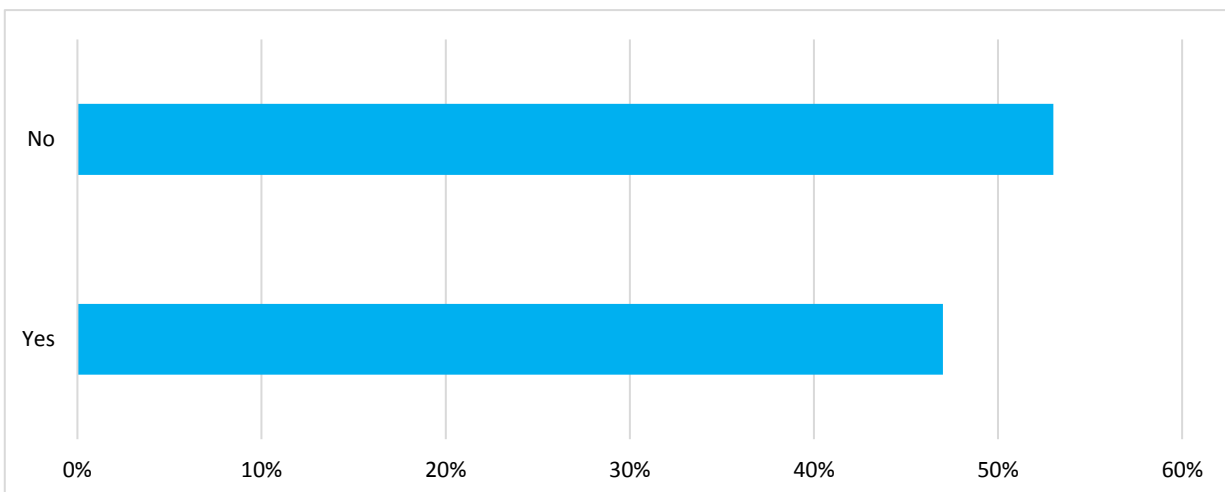
Just over a third of respondents felt that long payment terms were the result of an imbalance in power between businesses. Less cited reasons were the nature of goods and services and the invoicing procedure being complex. However, most respondents cited “Other” reasons as the driver for longer payment terms, with cash flow management as the most common reason for long payment terms.

How have long payment periods affected you? Please tick all that apply.



The most often cited result of late payments is that it causes further delays to other suppliers further along in the chain. It has also prevented business from expanding their staff or investing further in new equipment. There are also a range of financial implications that affect day to day running of respondent’s businesses, although these were less often cited as implications of late payments. When responding with ‘Other’, respondents highlighted that long payment periods negatively affect their cash position; combined with limited assets and inflexible banking risk the viability of some businesses.

Do you use technology to manage the payment process? If yes, how has it helped?



There is a fairly even split between those engaging in the use of technology to manage the payment process, with slightly more respondents not using technology than those that are.

Those that use technology to manage the payment process highlight that it helps to companies be aware of late payments, allows them to respond quickly and chase payment.

Do you think that newly introduced measures, namely the Small Business Commissioner and payment practices reporting, will affect the culture of payment practices?

The majority of respondents came back with a negative impression of how newly introduced measures would help them with regards to payment practices. Payment practice reporting is patchy at best and unless changes are made and there are sanctions on payers to abide by timely payment practice, they will continue to delay payment for as long as they can get away with it. Public bodies should take the lead by making it easier to find the data on their websites in the first instance.

How do you think these measures could be enhanced to further promote a best practice payment culture?

Suggestions from respondents on the measures that could be enhanced include:

- More 'name and shame' and financial sanctions placed on persistent offenders;
- Discounts for early payment; penalties for late payment;
- There is a worrying trend for clients, (contractors and some public bodies) to agree long payment terms 60 days+ and provide the opportunity for the payee to pay a sum in order to be paid early. Such practices should be banned;
- Ensuring larger companies pay all their supply chain on time and adhering to best practice payment agreements such as Network Rail's Fair Pay Charter;
- Any party with a vested interest in an outstanding payment on a construction project to hold a lien on the project itself until payment is made;
- All companies that are late payers should not be permitted to bid for and/or receive orders from government and local government bodies and departments;
 - All large organisations should also be forced to pay their suppliers ahead of paying any dividends to shareholders; and
 - A register of companies that pay later than 30 days should be set up and maintained.

Do you think that the legal definition of when a payment term is considered to be 'grossly unfair' to the supplier is clear?

This question received a mixed response from our members. The issue is not necessarily about suppliers not knowing the legal definition of when a payment term is considered to be 'grossly unfair', rather, the issue is clients act with impunity because they feel they can get away with applying 'grossly unfair' payment terms. There needs to be more education on the issue, and a promotion of transparency, to change the culture within the sector.

Do you think any specific changes or measures could be introduced to make it easier for suppliers to charge interest when they are paid beyond agreed terms?

The largest grouping of respondents felt that there were specific changes that could be made to help suppliers charge interest when they are paid beyond the agreed terms. Further legislation should be provided to assist supplier to enforce payment of interest which could be a shortened court process to allow payees to claim interest where the payer has not disputed entitlement or the date it was finally paid.

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A number of respondents believed that there is already a mechanism for making it easier to charge interest in most contracts, but it is rarely used. Some believed that charging interest on late payments doesn't make any difference and just adds in an extra level of administration that complicates the payment process, while others suggested that there may be a reluctant to do this as they are looking at maintaining long term relationships.

Main contractors are increasingly willing to accept a 2% plus base rate of interest charge for late payments as this is often more cost effective than obtaining financing from a bank or lender in the knowledge that the interest may often not be levied by the payee because of the risk of damaging their business relationship. Essentially, the supply chain is being used as a cheap alternative banking facility.

Are additional measures needed to give confidence in the Prompt Payment Code as a statement of good practice?

Less than 20% of respondents felt no further measures are needed.

Additional measures suggested include:

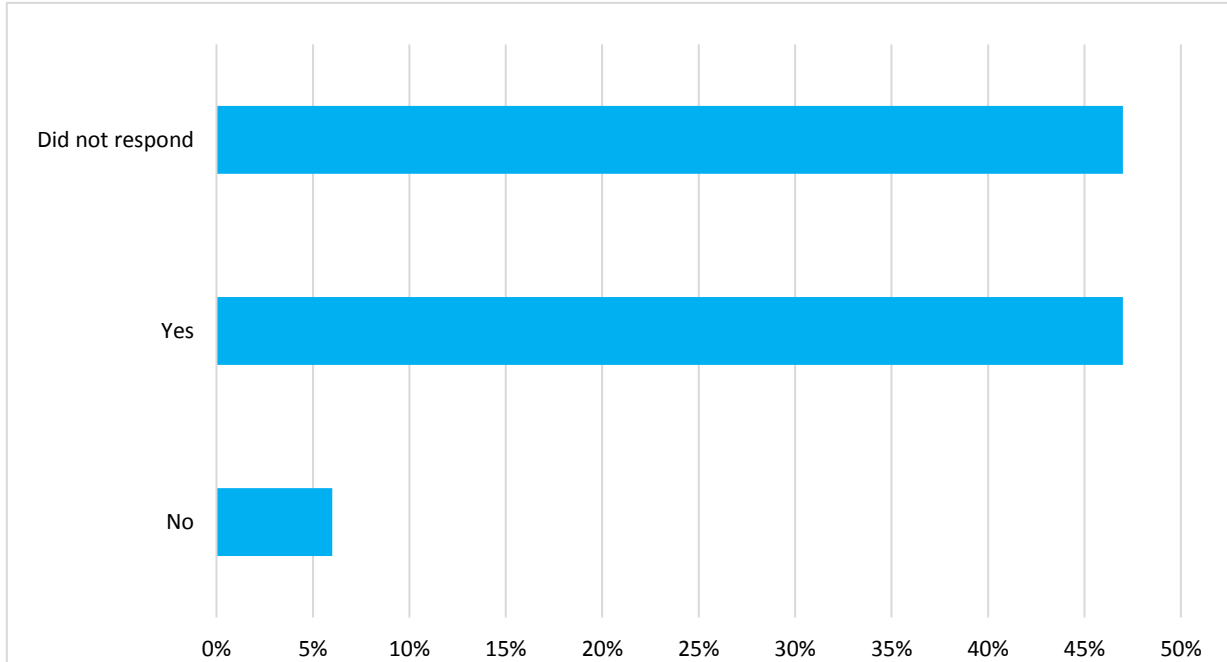
- More visibility in reporting of fines, sanctions, removals of firms who have signed up;
- More education across the industry;
- Forcing all companies that sign up to the Prompt Payment Code to pay suppliers within 30 days before paying any dividends to shareholders. If they fail to within 30 days then they should be publicly struck off the list;
- Tougher sanctions on non-compliance such as preventing a company from bidding on public tenders; and
- The Prompt Payment Code should be more vocal if a party has been found guilty – a name and shame approach would also help compliance.

Are there any steps that could be taken to encourage more businesses to identify breaches of the Prompt Payment Code by signatories?

Respondents suggested the following steps to encourage more businesses to identify breaches of the Prompt Payment Code:

- Increase public awareness of its existence and its ease of use;
- A 'name and shame' mechanism, with penalties;
- Ensuring anonymity when identifying breaches, such as a whistleblowing approach;
- Allowing representatives such as ACE to advocate on behalf of members, to alleviate the fear of repercussions if the payee puts its head above the parapet; and
- Businesses should publicise their actual payment days and make it a KPI that they need to satisfy as part of their trade body membership.

Should the Prompt Payment Code be moved to the responsibility of the Small Business Commissioner?



Over 45% of respondents said that the Prompt Payment Code should be moved to the responsibility of the Small Business Commissioner, with over 45% also choosing not to respond to this question. 6% of responders felt it should not be moved.

Those that responded 'Yes' said that the move would provide more direct accountability and reporting to Government. However, respondents argued the Small Business Minister must also have the authority to force companies to comply and unless the body has the adequate powers to enforce sanctions it does not matter who is responsible.

Of those that responded 'No', the main concern was that moving the Prompt Payment Code into the remit of the Small Business Commissioner underlines the assumption that only small businesses have to deal with the issue of late payments, when, clearly, late payments are an issue that also affect large companies.

What role could business representatives and sector bodies take in fostering a responsible payment culture?

Respondents suggested business representatives and sector bodies take the following actions in fostering a responsible payment culture:

- Maintain ongoing contact with the Small Business Commissioner to monitor its' effectiveness;
- Take leadership by highlighting the problem;
- Educating the sector, promoting transparency to change the culture within the sector. Recipients to charge interest on any late payment;
- Setting a good example by paying suppliers on time; and
- Introducing something like the Real Living Wage scheme for responsible companies.

How could they use existing late payment measures, namely the Small Business Commissioner, payment practices reporting requirements and Prompt Payment Code?

Respondents suggested that:

- Persistent offenders should be reported without fear of legal reprisal;
- Client bodies should be made fully aware of these practices through an education campaign; and
- End clients should be brought together around a commitment to ensuring payments to Contractors are on time on any project and/or framework.

What is your experience of measures to improve payment practices in other countries?

Most respondents did not have examples of international experience which has led to improved payment practices, however some highlighted that most payment practices are worse than their experience in the UK.

What measures may be effective in addressing lengthy payment terms?

Respondents provided a number of measures that may be effective in addressing lengthy payment terms. These include:

- Intervention by trade associations to those organisations who are persistent offenders;
- Legislating 30-day maximum payment terms and improving the legal process for enforcement;
- Late payment penalties and easier methods to pursue companies that do not pay on time;
- Naming and shaming those companies who do not adhere to agreed payment terms;
- Ban all companies that pay late from bidding for public sector work, big or small; and
- High interest rates on outstanding balances and ceasing work on a project for which there is any overdue invoice and no valid withholding notice issued.

Do you think the measures recently announced to improve board level responsibility will have an impact?

ACE's members feel strongly that the measures announced will have little to no impact on board responsibility to ensure payments are made on time.

Does more need to be done to ensure that payment behaviour is considered at board level?

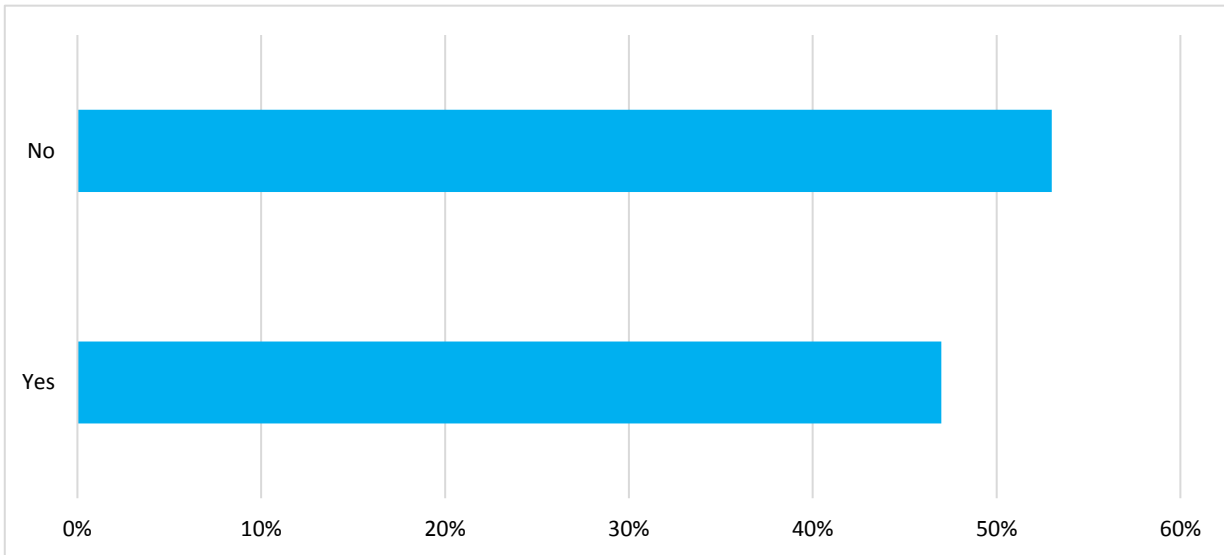
The overwhelming response from ACE's members was that there does need to be a greater awareness to ensure that boards consider the payment behaviour of their companies

What are the main barriers in using technology to enhance the payments process? What could be done to encourage greater take up of SMEs?

The majority of our members surveyed felt there were very limited reasons for not using technology to enhance the payments process. Some felt that in smaller organisations, personally chasing invoices was either their preferred way of operating or it would be too costly to train up and implement these systems. Others highlighted that technology was not even an issue, it was the fact that the invoices simply needed authorising and paying. Some

members also raised concerns about the compatibility of technology, especially for SME's who will often employ different technology that can hinder payment processing.

Are you aware of the finance options available to help manage long payment periods?



The majority of respondents were not aware of what options were available to them to help them manage longer payment periods.

Have you faced any barriers to accessing appropriate finance? If so, please provide details:

Respondents to our survey felt the main barrier to accessing finance were banks being very unwilling to lend any money to professional services and the money they are willing to lend is not enough and disproportionate compared to the guarantees required, despite a business' track record. Other responses suggested that ever since the recession, overdraft limits have been limited and have never returned to pre-crash levels.

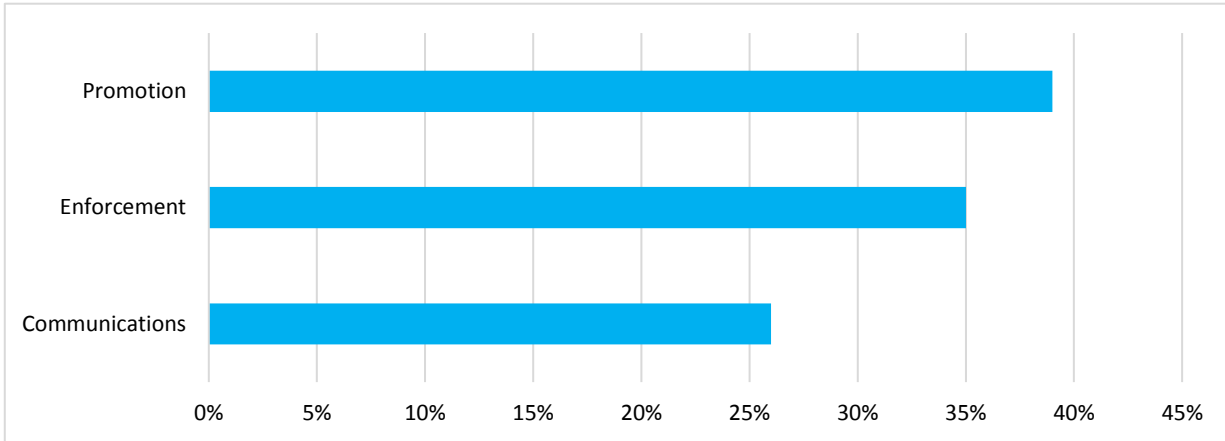
Have long payment periods impacted your investment plans for growth? If so, how?

The majority of respondents suggested long payment periods had impacted their plans for growth.

Respondents suggested that long payment periods had impacted investment plans for growth by:

- Driving the timing of any major purchases;
- Severely restricting cash flow and attitude of banks to overdraft;
- Creates a lack of confidence;
- Relying on overdraft to cover late payments;
- Limits the use of finance for investment; and
- Could not afford the risk of taking on staff.

What role, if any, could industry or sector bodies play in identifying and encouraging good payment practices within their sectors?



Respondents felt the most important role industry and sector bodies could play in identifying and encouraging good payment practices is through promotion, followed by enforcement, with communications being cited as the least important.

About ACE

As the leading business association in the sector, ACE represents the interests of professional consultancy and engineering companies, large and small, in the UK. Many of our member companies have gained international recognition and acclaim and employ over 250,000 staff worldwide.

ACE members are at the heart of delivering, maintaining and upgrading our buildings, structures and infrastructure. They provide specialist services to a diverse range of sectors including water, transportation, housing and energy.

The ACE membership acts as the bridge between consultants, engineers and the wider construction sector who make an estimated contribution of £15bn to the nation's economy with the wider construction market contributing a further £90bn.

ACE's powerful representation and lobbying to governments, major clients, the media and other key stakeholders, enables it to promote the critical contribution that engineers and consultants make to the nation's developing infrastructure.

Through our publications, market intelligence, events and networking, business guidance and personal contact, we provide a cohesive approach and direction for our members and the wider industry. In recognising the dynamics of our industry, we support and encourage our members in all aspects of their business, helping them to optimise performance and embrace opportunity.

Our fundamental purposes are to promote the worth of our industry and to give voice to our members. We do so with passion and vision, support and commitment, integrity and professionalism.

Further information

For further details about this consultation response, please contact:

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