The 100 Group

The Rt Hon Greg Clark MP
Secretary of State
Department of Business, Energy and Industrial Strategy
1 Victoria Street
London
SQ1H 0ET

04 November 2016

Dear Secretary of State,

Proposed new payment reporting requirements for large businesses

Thank you for passing our letter dated 19 September to Margot James MP (Minister for Small Business, Consumers and Corporate Responsibility).

We attach a copy of our response to her reply, in which we have:

- Raised significant concerns with the original Impact Assessment used to support the legislation, which we believe need to be addressed in the final Impact Assessment. We believe the original Impact Assessment makes references to benefits that are substantially overstated and costs that are significantly underestimated.
- Offered a site visit to help understand the common and practical issues experienced in deciding when payments to suppliers are actually due and to help establish a fit for purpose way for you to exercise the powers given to you as Secretary of State under the Small Business, Enterprise and Employment Act.

Yours sincerely,

Russ Houlden

Russ Houlden
Chairman
Financial Reporting Committee

Matthew Lester
Chairman
Investor Relations & Markets Committee

The 100 Group

Margot James MP
Minister for Small Business, Consumers and Corporate Responsibility
Department of Business, Energy and Industrial Strategy
1 Victoria Street
London
SQ1H 0ET

04 November 2016

Copy sent to the Secretary of State, Department of Business, Energy and Industrial Strategy

Dear Ms James

Proposed new payment reporting requirements for large businesses

Thank you for your letter of 28 October 2016 in response to our concerns about the proposed duty to report on payment practices for large businesses ("Duty to Report").

We set out below our views on the suitability of the BACS figure as an assessment of the benefits for the Duty to Report, our support for the proposed Small Business Commissioner, and our research into the costs to large businesses to meet the Duty to Report requirements.

Suitability of the BACS figures

We recognise that BACS produce reports on overdue payments owed to small and medium sized businesses. In June 2014 the amount reported was £39.4 billion; in January 2015 the amount was £32.4 billion; and in June 2015 the amount was £26.8 billion.

We also understand that this measure was used in the impact assessment for the Small Business, Enterprise and Employment Act ("SBEE Act") as the benefit associated with the Duty to Report requirements.

We have spoken to BACS, and they have informed us that they only collate the data. They do not have any further analysis of the figure, including who is responsible for the amount overdue, or the reason for it being overdue. For these reasons, we do not think it is appropriate that the BACS figure is used as evidence to support the Duty to Report or assessment of benefits.

The BACS survey does not show who is responsible for the amount that is overdue to small businesses. Therefore, we believe it is inappropriate to attribute this amount to large businesses withholding payments as there is no evidence to support this. In our view, the amount overdue is likely to consist of payments from the whole business community, including large and small UK businesses, government bodies, and overseas companies. In our experience, large businesses are generally well-financed and therefore pay invoices on time, and go to significant lengths to behave responsibly. It may well be that other, smaller businesses, which are less well financed and less exposed from a reputational viewpoint, are delaying payments in order to address cash flow problems and therefore represent the majority of the apparent overdues issue.

We believe that the BACS survey is a fundamentally flawed method of establishing the amounts which are genuinely overdue as there is no attempt to verify the figures between the supplier's view and the customer's view of overdues. It takes the view of the supplier even though that may be incorrect due to failure to deliver in accordance with agreed terms, failure to invoice in accordance with agreed terms, failure to record agreed terms in the supplier's systems, failure to allow for credit notes, failure to allow for liquidated damages, system errors, and a whole host of other reasons which are common in practice and well understood by those who work in supply chain roles. We would like to invite you to visit one of our companies to understand the reality of payment processing so that you can understand the range of ways in which the BACS figure could be a substantial overstatement of the genuine overdue position.

We also note that the amount of payments overdue to small businesses has reduced significantly (32%) from June 2014. This is probably, in part, an outcome of the other more targeted initiatives that the government has introduced e.g. the Prompt Payment Code. In our view, a lot of effort has already been made by the business community to improve payment terms and methods of payment to small businesses. We believe the reduction in the amount overdue, and the support shown by large businesses to other government initiatives, demonstrate that the majority of large businesses (our members) already act very responsibly with regard to paying small businesses and their supply chain. We are not aware of any evidence that suggests large businesses delay payments or have unsuitable payment terms with small businesses. If you are aware of any evidence of irresponsible behaviour by large businesses (our members), we fully support you finding suitable, fit for purpose, and targeted measures to address this.

Support for the Small Business Commissioner

We support the government's initiative to improve the transparency of payment terms and to assist small suppliers in receiving payments on time. However, the mechanism to achieve this needs to be cost-effective and fit for purpose. In 2015 you consulted on the Small Business Commissioner and suggested one of its main functions is to offer mediation to resolve payment disputes between small and large companies. We think this mechanism is more appropriately targeted at the real issue, which we understand is to identify large businesses that do not pay their suppliers in line with agreed payment terms, or those whose payment terms are unreasonable. This is likely to be more cost-effective and less time-consuming for large companies which already pay suppliers on time, and also requires small companies to consider their responsibilities before escalating a dispute. Once the Small Business Commissioner has gained experience in the role, they may decide that some form of reporting from large companies is still required which is more focused and appropriately targeted than the current proposal.

Robustness of the research into the costs for large businesses

We recognise that there was a previous consultation, and our response stressed our concern that the requirements were disproportionate and not fit for purpose. We also have some concerns that the Summary of Consultation Responses is not reflective of the individual responses. For example, it appears responses to questions were analysed based on the number of responses that were in favour or against. We do not think this analysis is appropriate, as it does not take in account representative bodies such as The 100 Group (which represents the largest UK businesses) and the CBI (which represents both large and small businesses).

The outcome of the consultation and the impact assessment for the SBEE Act both highlighted the need for further consideration of the costs to large businesses. However, we remain concerned that BEIS's research into these costs is not reflective of the FTSE 100. This is why, after discussion with your team at BEIS, we carried out our own research into the costs of delivering the reporting requirement.

Our research showed our best estimate of the cost to the FTSE 100 of meeting the proposed requirements is around £100 million on an NPV basis. The cost to the broader UK business environment is likely to be a multiple of this figure, as large UK companies exist outside the FTSE 100. This is much higher than the previous cost estimates produced by BEIS. We strongly ask BEIS to consider this cost and the impact it may have on jobs and investments, and on the perception of adding to red tape, when deciding if the benefits of the proposed requirements are justifiable.

The estimated NPV cost of £100 million is based on a representative sample of 11 of the 100 companies in the FTSE 100. One-off costs to meet the proposed requirements range from

£10k to £1,000k, with an average cost of £189k. Ongoing costs to meet the proposed requirements range from £5k to £150k annually, with an average cost of £41k. The range of costs from our research demonstrates the difference in size and complexity of companies, the capability of current systems to produce the data, and group structures. We understand that BEIS's research sample only includes two FTSE 100 companies, which we consider unrepresentative of the diverse nature of the FTSE 100. An overview of our research is set out in more detail in appendix A.

Our view, as stated in our original response, is that the proposed requirements are disproportionate, will be costly for businesses, and lead to unhelpful misinterpretations. We would like the opportunity to meet with you to discuss the proposals in more detail and work with you to find a way forward which meets BEIS's objectives.

Yours sincerely,

Russ Houlden

Chairman

Financial Reporting Committee

Matthew Lester

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Who we are

The 100 Group of Finance Directors represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the UK FTSE 100 Index. Our aim is to contribute positively to the development of UK and international policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the views of The 100 Group of Finance Directors as a whole, those views are not necessarily those of our individual members or their respective employers.

Appendix A – overview of 100 Group research

Some companies are still considering the costs of meeting the requirement and it is likely the costs listed below will increase. These costs are estimates based on the high-level information received to date. The high-level information is open to interpretation (for example, the invoice metrics specification does not clarify whether the information should be based upon number of invoices or alternatively on value of invoices). Once the guidance, due to be released by BEIS in January 2017, is known, this is likely to have a further impact on the cost estimates below.

	Costs £k Initial	**Costs £k Annual**
Company A – FTSE 100	19.0	27.0
Company B – FTSE 10	10.0	22.0
Company C – FTSE 10	1,000.0	150.0
Company D – FTSE 10	30.0	12.0
Company E – FTSE 100	30.0	5.0
Company F – FTSE 50	47.0	85.5
Company G – FTSE 50	150.0	TBC
Company H – FTSE 100	30.0	30.0
Company I – FTSE 100	36.2	36.0
Company J – FTSE 10	25.0	25.0
Company K – FTSE 50	700.0	13.0

Average initial cost = £189k

Average annual cost = £41k
Assuming a discount factor = 5%
Annual cost in perpetuity = £820k

Average NPV cost to one company = £1m

x100 as 100 companies in the FTSE 100 **= £100m**