

National Federation of Retail Newsagents

Powers of the Small Business Commissioner

Response to the Department for Business, Energy and Industrial Strategy

Introduction

1. The NFRN welcomes the opportunity to present its views to the government on the powers of the Small Business Commissioner.

About the NFRN

2. The NFRN was founded in 1919 and is one of Europe's largest employers' associations with the owners of over 15,000 independent retailer outlets in membership throughout the UK and Ireland.
3. We exist to help the independent retailer compete more effectively in today's highly competitive market by providing practical help and assistance, commercial support, deals and buying opportunities, training, expertise and services.
4. The NFRN also actively represents its members' interests at governmental and parliamentary level, and we are the official government referral body for the sector and are a powerful voice for the independent retailer.
5. Membership of the NFRN consists of a variety of independent retailers, including: newsagents, convenience stores, confectioners, florists, petrol forecourts, news deliverers, off-licences, post offices, coffee shops, and card & stationery shops.

Question 1: To what extent do you agree that the Commissioner's complaints handling function should be extended to allow for small business to small business disputes?

6. The NFRN believes that the powers of the Small Business Commissioner should be extended so that the Commissioner has the power to handle disputes wherever they come from. Late payments from small companies can, cumulatively, be as dangerous as to a company's survival as those from larger companies and so complaints should be handled on the same basis.

Question 2: To what extent do you agree that the review and report function in proposal 2 should be made available to the Commissioner?

7. It is not unreasonable to expect that the Small Business Commissioner and his team would become subject experts on issues surrounding small businesses and it therefore makes sense that when considering policy Ministers seek his advice

Question 3: To what extent do you agree that the power in proposal 3 should be made available to the Commissioner?

8. The NFRN fully supports the Expanded Complaints Function, allowing the Commissioner to initiate investigations without a complaint from a small business. This would assist in addressing situations where companies do not ask for help that the Commissioner would otherwise be able to give.

Question 4: To what extent do you agree that the power in proposal 4 should be made available to the Commissioner?

9. If the Commissioner is going to be able to fully support small businesses then the ability to require businesses to co-operate will be essential. The NFRN therefore fully supports this proposal.

Question 4.1: To what extent do you agree that the Commissioner should be able to issue an information notice?

10. We fully support this as a first step in the process.

Question 4.2: To what extent do you agree that the Commissioner should be able to apply to the Court for an order enforcing an information notice?

11. If the process of requiring businesses to provide information is to have any value then there must be a means of enforcing compliance with a request. The Commissioner should therefore be able to apply to the Court in this way.

Question 4.3: To what extent do you agree that the Commissioner should be able to issue a civil penalty if a notice recipient does not comply with an information notice and to recover the amount of the penalty as a debt (through court proceedings if necessary)?

12. Again, the NFRN believes that if the Commissioner is to support small businesses in the way described, failure to comply with an information request must have meaningful consequences. If an information order is ignored then a penalty, with a means of collecting the amount due, would seem essential.

Question 5: To what extent do you agree that the power in proposal 5 should be made available to the Commissioner?

13. If companies with unfair payment practices are to be persuaded to adopt better working practices, then there does need to be the element of "stick" available to the Commissioner. Without this the Commissioner will be a toothless regulator and that will not benefit the small businesses that the Commissioner is there to help.

Question 5.1: To what extent do you agree that the Commissioner should have the power to issue a monetary award where there is a finding that payment(s) are due to a small business complainant and have been unfairly or unreasonably delayed or withheld by the respondent?

14. The NFRN agrees strongly that this should be the case.

Question 5.2: To what extent do you agree that if the Commissioner considers that the respondent cannot pay the monetary award in the time specified, he or she may issue a binding payment plan?

15. The NFRN sees this as an important part of ensuring that businesses understand that paying cannot be avoided.

Question 5.3: To what extent do you agree that where the respondent fails to pay the monetary award, or fails to pay an instalment of a binding payment plan, the amount of the award or instalment should be recoverable as a debt (through court proceedings if necessary) by (i) the complainant themselves; (ii) the Commissioner, who would subsequently pass the amount recovered to the complainant; (iii) both the complainant and the Commissioner?

16. If the respondent fails to pay the award, then the Commissioner should take whatever steps are necessary to recover the debt, including court action.

Question 5.4: To what extent do you agree that the Commissioner should have the power to impose a financial penalty when a business does not comply with a monetary award and / or payment plan?

17. The Commissioner should have the power to impose a penalty in either or both cases.

Question 5.5: To what extent do you agree that in circumstances where there is a failure by a business to pay a financial penalty, the amount of the penalty should be recoverable by the Commissioner as a debt (through court proceedings if necessary)?

18. Yes, the Commissioner should be able to recover the debt, including through the courts. No giving the Commissioner this power would be an open invitation for some businesses to ignore his judgements.

Question 6: To what extent do you agree that the power in proposal 6 should be made available to the Commissioner?

19. The ability of the Commissioner to reclaim the costs of any investigation may well act as a disincentive to attempting to obstruct any such investigation. Such a lack of co-operation would be likely only to drive up the costs that a company would be liable for at the end of the investigation.

Question 6.1: To what extent do you agree that, where the respondent fails to pay investigation costs incurred by the Commissioner, those costs could be recovered by the Commissioner as a debt (through court proceedings if necessary)?

20. Yes, as with other awards, these costs should be recoverable, including through the courts if necessary.

NFRN

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