Association of Professional Staffing Companies (Global) Ltd
Tel: 0203 117 0910 Email: info@apsco.org Web: www.apsco.org

Consultation Response: Amendments to Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017

About APSCo UK and APSCo OutSource

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is the trade association for the professional recruitment market. APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the resource outsourcing sectors. Our members support businesses filling skilled permanent and contract roles at the higher end of the labour market across IT and technology, financial services, engineering, pharmaceutical and life sciences, manufacturing, retail, media and public sector.

Contact

Should the responsible payment team or the SBC office wish to hear more from APSCo and its membership please contact tania.bowers@apsco.org

- Tania Bowers
- Global Public Policy Director

What is outsourcing?

Our OutSource members offer a managed service programme (MSP) for contingent labour to their clients. They provide services for a specific period, typically for an initial contract period of three years with an option to extend. An MSP provider will be responsible for the entire process of sourcing, onboarding, managing, and off-boarding these workers. They will typically provide or partner with a technology platform (VMS) to manage the entire process from requisition to payment of the supply chain and/or workers. An MSP provider who is vendor neutral will not source candidates directly but will work with the recruitment supply chain to manage the vacancies on behalf of the end-user client. They will negotiate contracts and rates, procure suppliers, manage compliance, and provide reporting on hiring, costs, invoicing and performance against an agreed service level agreement.

The outsource sector is estimated to be worth $26 billion in the UK in 2022 and their service is used by most larger businesses and across central government and the wider public sector. Our APSCo UK members increasingly are required by end-hirers to contract directly with our OutSource members as 2nd tier suppliers, to simplify resourcing for the end-hirer and to pass responsibility and liability to a specialist outsourcing partner.

APSCo UK and OutSource Survey on Payment Terms

APSCo UK and APSCo OutSource surveyed its membership in 2022 on long payment terms. We asked for information on payment terms across IT and technology, pharmaceuticals, logistics, manufacturing, retail, engineering, public sector, and financial services. Public

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sector and financial services had the shortest average terms at 30 days. Most sectors imposed payment terms of between 30-60 days, although life sciences and pharmaceuticals were a notable outlier with OutSource responses reporting 11% insisting on 91-120 day payment terms and 67% on 31-90 days. In engineering 33% required 61-90 day payment terms.

Members reported that end-hirers gave a variety of reasons for needing these long payment terms, but cashflow pressures was the top answer. OutSource members considered the second reason was the end hirers flexing their contractual leverage, control over procurement costs and cashflow being one of the benefits of involving an outsourcing partner.

APSCo UK responses were similar to OutSource's, not surprising as they are in the same supply chains. Pleasingly most reported that across all sectors their payment terms were largely up to 30 days or 31-60 days. Pharmaceutical and engineering had the longest contractual terms. Retail and manufacturing clients were reported as being the latest payers by APSCo UK members.

In pharmaceuticals 32% of responses said 51-75% of invoices were paid late.

Both OutSource UK and APSCo UK members reported the main reason for late payment was client inefficiency, with the second being cashflow and contractual power.

Impact of Late Payment on Contingency Labour Market

The contingency labour market is subject to the stress of being required by law or regulation and by good practice to pay workers or their employers on short terms ranging from 7-28 days of invoice. The invoice is triggered by submission of a timesheet, usually within a few days of the period of work. Some end hirers, either directly or via their outsourcing partner's contract, mandate payment to workers on 7 or 14 day terms whilst imposing 60-90 day payment terms on their suppliers, sometimes up to 120 days and as a result many outsourcers work on pay when paid terms.

A 2nd tier supplier may be required to bridge a payment gap of up to 3 months or an open-ended pay when paid, from payment terms imposed on the MSP by the end-hirer. This has led to a robust invoice financing sector, popular and affordable during the last 10 years of historic low interest rates, but an affordability risk as lending rates rise.

Question 1: Do you agree that the Regulations should be amended to extend their effect beyond 6 April 2024?

Yes, and publicised more widely

Question 2: Do you agree that the Regulations should be amended so that a qualifying business is required to report the total value of payments due in the reporting period that have not been paid within agreed terms? Yes / No / Don't know Please explain your answer / provide evidence

Yes, a company at the top of the supply chain may only require one invoice per month from an MSP or RPO for hundreds or thousands of workers. Therefore, the extent of long payment terms may be effectively hidden in prompt payment reporting, or may not be reported as their invoice is not made to an SME. These workers at the ultimate bottom of the supply chain must be paid to term – weekly or more commonly monthly – and the ultimate customer may impose very long payment terms or may delay payment. This means the pressure of financing the supply chain is largely at the bottom of the chain with the party with the contract with the worker or the worker's employer, often an SME business.

Question 3: Do you agree that it should be a requirement for a reporting business to include their payment practices and performance reports in their directors' report?

Yes, it is a way of ensuring that payment is treated seriously at parent company board level and is not simply a finance department unaudited reporting activity. It is very useful to read Directors' comments for context.

Currently, the nature of the online reporting under the regulations is to a certain extent subject to a company's discretion as to how they report, so it should be prescriptive with clear guidance.

However, our members would not generally rely on this reporting when assessing a potential client, as by the nature of being reported data it is not current. Businesses rely on software such as Sidetrade and Creditsafe for information on payment terms and habits such as average days' payment beyond terms, which can then be compared against the company's Standard Industry Classification (SIC) code. These systems work by customers feeding in their own data, hence ensuring current and reliable information. They differentiate disputed payment from "no cause" late payment.

Question 3a: Do you agree that making it a requirement for a reporting business to include their payment practices and performance reports in their directors' report is a sufficient additional requirement for a reporting business? Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know Please explain your answer / provide evidence

Disagree. Ultimately this is a nudge to encourage better corporate behaviour, which is beneficial, but more could be done to have immediate impact.

Question 4 Do you agree that the Regulations should be amended to clarify payment dates used for reporting when supply chain finance is used?

Yes. However, in the recruitment and outsourcing sectors supply chain finance is generally purchased by the 2nd tier supplier to pay the contingent worker (or their employer) to terms (between 7-28 days). Prompt payment is required to comply with employment legislation and recruitment regulation. This amendment would not shed any light on this practice,

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where a 2nd tier supplier may be required to bridge a payment gap of up to 3 months, from payment terms imposed on the MSP by the end-hirer.

Outsourcing businesses receive very low margins to cover administration costs and profit, processing high volumes of worker placements. They do not have the cashflow to finance the payments and the volumes are very large to finance. Pay when paid terms, namely payment to the 2nd tier supplier once the master vendor has been paid, are common. Payment is usually on client payment plus 3-5 working days. The 2nd tier supplier loses control of payment, meaning visibility of payment terms up the supply chain is important. They also effectively lose the contractual right to enforce the debt if it remains unpaid, so they are at financial risk. The arrangement generally works fine with our large outsource member businesses but is built on trust and reputation, and carries cost and risk for the chain, which the end client could avoid by paying promptly for services already received. Pay when paid can be difficult to finance or factor as the finance company must assess the whole chain of supply and is more costly, which disproportionately disadvantages SMEs who are most likely to be lower in the chain.

The regulations should require a qualifying business to separately identify payment terms on contracts where they require advance payment to workers or other suppliers in a chain, or it is a statutory requirement, as in the case of a supply of a contingent worker to an end hirer. It should also be a requirement to disclose the differential in payment terms between their terms and those of the party paying the worker or worker's employer. Both OutSource and APSCo UK members are keen for Government to consider any suitable steps it could take to require end hirers to pay on the same terms as their workers in their supply chains must be paid.

Question 5: Do you agree that the Regulations should be amended to consider disputed invoices as a separate entity, to improve the accuracy and transparency of the reporting data? Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know Please explain your answer / provide evidence

Agree. In the recruitment and outsourcing sectors, and in public sector contracts, disputes or supplier failure to follow complex or opaque billing processes can lead to late payment. If this amendment is adopted, then it should include delayed payments due to billing processes.

There is frustration amongst APSCo UK members around client inefficiencies leading to late payment – particularly if an MSP is involved in the process, then the 2nd tier supplier has no direct route to the client so issues around incorrect rates, for example, may be harder to resolve. Another complaint is client delay in raising a PO number, and the payment terms running from the eventual issue of the PO. Some members are forced to engage full time staff members to just resolve invoice issues.

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Question 6: Do you agree that the Regulations should be amended so that payment practice and performance reports should include information on the standard retention payment terms in qualifying construction contracts?

No comment.

Question 7: Do you agree that the Regulations should be amended so that payment practice and performance reports should include statistical information on retention payments? Strongly agree / agree / neither agree nor disagree / disagree / strongly disagree / don't know Please explain your answer / provide evidence Neither agree nor disagree.

No comment.

Question 8: How many hours does your business spend and which staff are required (please give an indication of hours by level of seniority) in order to comply with the Reporting on Payment Practices and Performance Regulations 2017?

No comment. We do not have a sufficient pool of data from members on this question.

Question 9: What does this cost your business in terms of pay for each level of seniority? Please explain your answer / provide evidence

No comment. We do not have a sufficient pool of data from members on this question.

Question 10: What (if any) additional costs did your business incur (beyond staff pay) in complying with the Reporting on Payment Practices and Performance Regulations 2017?

No comment. We do not have a sufficient pool of data from members on this question.