

Greater use of non-court dispute resolution driven by an enhanced role for the Small Business Commissioner

Cost benefit analysis by Social Finance

Context

We believe there are three potential benefits from the reforms. Reduced pressure on the court system, fewer business deaths following a decline in late payments, and a decrease in time spent by businesses on chasing late payments. The potential scale of these benefits is significant. The Federation of Small Business¹ estimated that if all businesses were paid on time, then £2.5bn would be added to the UK economy through a reduction in late payments. Our analysis has focused on the impact on the court system.

The current scale of the SBC's direct work is small relative to the number of businesses facing late payment issues. In 2022-23 they worked with 387 small businesses with payment issues². In comparison over half of small businesses experienced a late payment³. The SBC though also plays a crucial role in supporting businesses to resolve their problems by helping them navigate the legal system. Last year they had over 300,000 views to their website. In addition, their direct work, and public communication around it, can deter businesses from carrying out poor business practices.

Methodology

The methodology is supported by desktop research and analysis laid out below. However, where data is unavailable and there are no precedents to the reform we have used assumptions for our calculations. The impact of these has been set out in the scenario analysis.

Costs

We have assumed that to enable the increased remit for the SBC that their operating budget will increase from around £0.8m to £2.3m. To estimate this, we have used the South Australian Small Business Commissioner (SASBC) as a benchmark. The SASBC handled 500 mediation and pre-mediation cases in 2022-23, with a total of 1571 enquiries on dispute resolution⁴ – collectively over 4 times the total number of enquiries the current SBC faces⁵.

The SASBC has 14 staff members compared to the 5 staff members of the SBC, excluding non-executive directors. Assuming an increase in the number of SBC staff members to

¹ <https://www.fsb.org.uk/resource-report/time-to-act.html>

² https://assets.publishing.service.gov.uk/media/65e9870b5b6524001af21b15/Office_of_the_Small_Business_Commissioner_Annual_Report_and_Accounts_2022-23.pdf.pdf

³ <https://www.fsb.org.uk/resource-report/time-is-money.html>

⁴ (South Australia Small Business Commissioner Annual Report 2022-23, 2023)

⁵ SABC enquiries = 2071 vs SBC UK enquiries = 387

match that of the SASBC⁶, their operating budget would increase proportional to the increase in staff members from £0.8m to £2.3m.

This will support an expansion of both the investigation team to carry out their own investigations and further budget to increase their awareness. We believe this increased capacity will have a significant economic impact.

We recognise that the number of small businesses in South Australia is significantly smaller than in England and Wales and therefore the SASBC may have more capacity on a per-case basis to support small businesses. However, it is important to note that the SBC operates in a larger ecosystem of organisations and membership bodies such as the Federation of Small Businesses (FSB) and Confederation of British Industry (CBI). The FSB has over 200 full-time employees with an operating budget of over £10m and provides a debt recovery service alongside their legal helpline, utilised by over 100,000 FSB members annually as their most accessed member service. Therefore, the SBC can draw on other capacity in the sector and work in tandem with the other organisations supporting small businesses in England and Wales to ensure that it provides sufficient support to the large volume of businesses facing late payment issues.

Benefits

There are currently c.5.5m small business in the UK. Of these c.50% have experience a late payments dispute in the last 5 years⁷. The FSB estimates that this costs small businesses c.£11.58bn each year. A significant driver of the overall costs are legal fees – as 19% of cases are resolved at civil courts compared to only 8% of cases through Alternative Dispute Resolution mechanisms.⁸

The European Union ran a survey to understand the drivers of the lack of use around ADR in Europe. They found that companies are more satisfied with results from using an ADR. This is driven by cheaper costs. We estimate that cost of a single HMCTS court day is c.£3,200 – and additional costs of travel time to courts in line with government impact assessment evidence brings this to close to £3,800. ADR mechanisms are cheaper – at c.£1,250 per case and an additional £120 for businesses to deal with each case.⁹ Therefore for every case shifted from courts to ADR there could typically be a £2,400 saving.

However, in line with the UK the EU survey also found c.20% of companies use civil courts, almost double the amount using ADR. In the UK the most important driver of court versus ADR use was awareness, with 27% of businesses going to civil court doing so due to a lack of awareness of an alternative dispute mechanisms¹⁰.

The impact of the reforms is determined by how far the Small Business Commissioner can increase their awareness and influence from its growth. We have made two assumptions:

⁶ We have assumed staff and non-staff costs both increase

⁷ 70% experienced a commercial dispute – of which 72% faced a late or no payment dispute

<https://www.fsb.org.uk/resources-page/tied-up--unravelling-the-dispute-resolution-process-for-small-firms.html>

⁸<https://www.fsb.org.uk/resources-page/tied-up--unravelling-the-dispute-resolution-process-for-small-firms.html>

⁹ <https://www.ciarb.org/business-arbitration-scheme/>

¹⁰<https://europa.eu/eurobarometer/surveys/detail/1061 - Q7.2>

1. 25% of those who previously did not use ADRs due to awareness would shift to using them. This would decrease the proportion of small businesses with a late payment issue going to civil court by c.1ppt¹¹.
2. Each business experiences one dispute per annum.

Given the significantly lower cost of non-court resolution this could then save c.£70m in business time and court costs. For comparison this is in line with the additional expenditure that government spent on courts during Covid¹².

If the SBC managed to increase awareness by 10% instead then this would decrease the savings to £29m. The scenarios across each assumption is set out below.

Fig 1: £m direct impact of reform

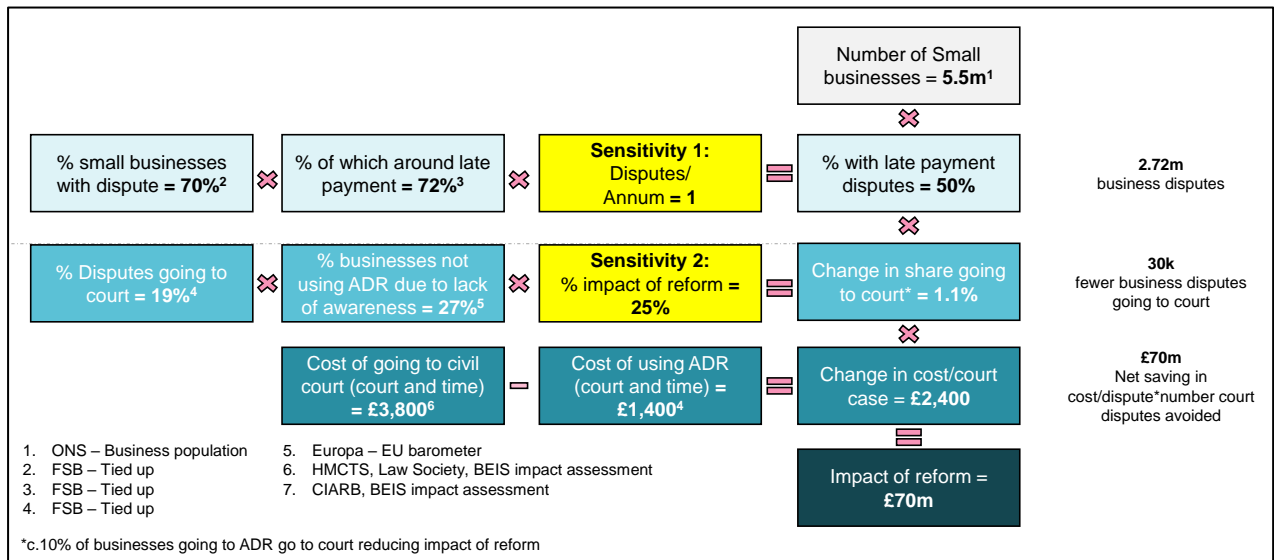


Fig 2: Sensitivity analysis £m direct impact of reform

		Disputes/Annum			
		0.20	0.50	1.00	2.00
% Impact on awareness	10%	£2M	£6M	£11M	£22M
	25%	£14M	£35M	£70M	£139M
	35%	£27M	£68M	£136M	£273M
	50%	£56M	£139M	£278M	£556M

¹²<https://www.fsb.org.uk/resources-page/tied-up--unravelling-the-dispute-resolution-process-for-small-firms.html>