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17th June 2024

Re: PAC Inquiry into Public Procurement in Northern Ireland

Dear Daniel,

Sincerest thanks to you and colleagues for facilitating the recent FSB evidence session at Committee. We much appreciate the constructive activity of members investigating procurement and prompt payment with a view to improvement.

Per your subsequent correspondence, we have responded to each point below.

1. Number of cases in which legal penalties were invoked by suppliers and the time frame over which they occurred:

As members will be aware, suppliers paid beyond 30 days are able to claim a fixed penalty, interest and reasonable creditor recovery costs under *The Late Payment of Commercial Debts Regulations 2013*. Under the legislation, suppliers are currently required to make a claim, rather than the automatic addition of penalties onto outstanding undisputed invoices.

Table 1 below shows the amount claimed by suppliers across the past three years as £1,648.28. Members will note the small number of claims.

Table 1			
Total NICS Central Dept invoices and actual claimed penalty charges across 2021 to 2023/24			
	2021/22	2022/23	2023/24
Total invoices in year across Central Depts	164, 652	160,626	163,174
Invoices paid late beyond 30 days	5,462	4,214	5,389
Interest Payable	£0.00	£136.00	£243.04
Fixed Penalties	£240.00	£204.22	£470.00
Creditor Recovery Costs	£0.00	£0.00	£355.02
Total:	£240.00	£340.22	£1068.06
<i>*Figures sourced from NI Assembly Question</i>			

As outlined at the Committee, the number of invoices from Central Government sits at around 5% of the public sector total. In order to demonstrate the liability resting upon other areas of government, we have provided an illustrative example below using data regarding the five Health and Social Care Trusts in NI.

- Table 2 shows the interest and fixed penalty options available per the 2013 Regulations
- Table 3 shows the number of invoices paid beyond 30 days across the five HSC Trusts in 2023/24
- Table 4 uses illustrative invoice examples of £500, £5,000 and £50,000 to demonstrate the potential scale of liability across the five HSC Trusts if all suppliers used the legislation as it allows
- Members will recognise that the potential liability is considerable - even without adding in the potential creditor recovery costs that suppliers are also entitled to claim
- Based on available information, a current working assumption is that around 250,000 public sector invoices are paid late beyond the legal deadline of 30 calendar days in NI each year – members will therefore be able to gain a sense of the overall potential claim liability across all public sector bodies.

Note: some relevant data points are unpublished at the time of writing, so we are unable to determine the number of disputed invoices or average invoice amounts when illustrating the examples below. Whilst not published, data should exist within HSC and wider Government systems.

Table 2					
Interest and penalties per <i>Late Payment of Commercial Debts Regulations 2013</i>					
Interest rate applied			Fixed penalty bands (£ invoice amount)		
Base Rate*	Penalty Rate	Total Interest	£0 to £999.99	£1000 to £9999.99	>£10,000
5.00%	8%	13.00%	£40.00	£70.00	£100.00

**Base Rate used is June 2023 per Regulations*

Table 3				
Number of Invoices Paid beyond 30 days in NI Health Trusts 2023/24				
Financial Year	Organisation	Total Invoices	Invoices Paid in 30 Days	Invoices outside 30 days
2023/24	BHSCT	650,803	601,615	49,188
	SHSCT	311,982	302,666	9,316
	NHSCT	387,764	368,485	19,279
	SHSCT	348,981	328,479	20,502
	WHSCT	302,447	276,698	25,749
	Total invoices	2,001,977	Total invoices paid late	124,034

**Figures sourced from NI Assembly Question*

Table 4			
Potential claim liability in £ millions against five HSC Trusts in 2023/24			
illustrative invoice amount	£500	£5,000	£50,000
Total interest 1 day	£0.18	£1.78	£17.81
Total interest 15 days	£2.67	£26.71	£267.12
Total interest 30 days	£5.34	£53.42	£534.25
Add Penalty	£40.00	£70.00	£100.00
Total due to supplier @ 30 days late	£45.34	£123.42	£634.25
Total late HSCT invoices in 2023/24	124,960	124,960	124,960
Total illustrative HSCT liability			
Penalty & interest accrual 1 day	£5,020,653.15	£8,969,731.51	£14,721,315.07
Penalty & interest accrual 15 days	£5,332,197.26	£12,085,172.60	£45,875,726.03
Penalty & interest accrual 30 days	£5,665,994.52	£15,423,145.21	£79,255,452.05
<i>*Does not include potential additional creditor recovery costs also allowed under 2013 Regulations</i> <i>**Calculations illustrative based on information available</i>			

2. The percentage of late payments that were responsible for insolvencies in Northern Ireland, as opposed to the UK.

As part of our further research we expect to have an estimated figure later this year which we will include in our updated report and share with the Committee.

3. An updated Prompt Payment report for 2023/24

We continue to work on updating our 2022 work and will share this with the Committee upon completion.

4. A follow up submission to the Committee

Having assessed the Hansard report from our evidence session, in addition to this response - the key points we wish to make are covered at this stage. We have been engaged by Departmental officials in the time since our evidence to Committee, and instead trust it would be useful to update members on subsequent progress *or* concerns - prior to publication of your report.

In the meantime, thank you once again. We wish you well as you continue your Inquiry.

Yours sincerely,

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