



Northern Ireland
Assembly

Public Accounts Committee

OFFICIAL REPORT (Hansard)

Inquiry into Public Procurement in Northern Ireland:
Federation of Small Businesses

23 May 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Daniel McCrossan (Chairperson)
Mr Cathal Boylan
Mr Tom Buchanan
Mr Pádraig Delargy
Ms Diane Forsythe
Mr Colm Gildernew
Mr David Honeyford
Mr John Stewart

Witnesses:

Mr Stuart Stevenson	Department of Finance
Mr Neil Hutcheson	Federation of Small Businesses
Ms Dorinnia Carville	Northern Ireland Audit Office

The Chairperson (Mr McCrossan): I welcome Mr Neil Hutcheson, head of policy with the Federation of Small Businesses (FSB). We appreciate your time and the work that you and the federation have put into providing us with a summary of various concerns. I invite you to give us a brief opening statement on some of the areas that you would like to discuss, after which members will ask questions.

Mr Neil Hutcheson (Federation of Small Businesses): Thank you very much, Chair, members and Committee staff, for facilitating my appearance today on behalf of the Federation of Small Businesses and our members. First, I will provide some context as to why the issue is important. Then, I will briefly discuss some findings that touch on the topics and make some high-level recommendations.

The FSB was founded in 1974, and this is our 50th year. We represent about 150,000 members, around 6,000 of whom are in Northern Ireland across every sector and size in the SME community. We are all about creating conditions for small businesses to start and to thrive, and we work on a range of issues on that basis. FSB members and SMEs in general form the bedrock of our evidence.

One issue is procurement, including prompt payment. We have done quite a lot of work on that over a number of years at the devolved level here and the reserved level at Westminster. We see a distinction between the private sector and the public sector on prompt payment. The issue was touched on last week by the member from East Antrim, who mentioned the fact that government has the cash to pay promptly, so cash flow, as an issue, is distinctive and different compared with that in large private-sector businesses.

On procurement, having watched the session last week, we note that the Department accepts the findings and recommendations of the Audit Office report, so I will not retrace those steps. We are not here to point out that element, but our points relate to the areas in the follow-up discussion. We will follow up with the Committee on that and make sure that everything is clear and precise.

It was interesting to note last week that Department of Finance officials highlighted the 186 recommendations on procurement that had been put forward in reports over about 14 years. There was an acknowledgement that there has been improvement but there are still gaps, and that is what we find on the ground. We agree that it would be unfair to say that everything is negative — it is worth saying that, because I do not want it to appear otherwise — but the following sentiment comes across time and again from our members when we ask them what they find when they procure or go through the tendering system with public-sector procurement: the system is stacked against SMEs and/or skewed towards larger organisations.

I will give some examples of how that comes across. I should say that these are one-offs; I have grouped them together only on the basis of overall sentiment, so that we can see a bit of a trend or a pattern rather than just one example. On processing time, we tried to get a group of small businesses in a focus group to ascertain how long it takes to complete tenders. The average time seems to come out as about one hour per page, beyond the initial details, which means that, if your tender is 30 pages, you are talking about the guts of a working week for a small business or microbusiness. That is how it is put across to us.

It is costly just to take part. Certain conditions may change with the Procurement Act 2023; for example, businesses may have to have insurance in place or prove their cyber credentials just to be eligible to take on the tender. That is a cost that, in addition to the time that they have invested, they do not get back. Moreover, the contract sometimes does not proceed once they have put all of that in place and made a submission — we have heard of occasions when a contract has been pulled — and feedback is not automatic and is inconsistent. One of our members said:

"In a recent water service tender, 100% of the tender assessment was on cost."

The first issue identified there was that the assessment may not be to do with the quality and overall spirit of what we are trying to get through a procurement process. The really interesting part, however, is that the tender organisation — in this case, I believe, it was NI Water — stated that no feedback would be given to those who were unsuccessful.

One factor that was given to us without prompting was the noticeable staff turnover in certain divisions of procurement. As a consequence, lack of staff expertise was really noticeable. One person told us about an example in the past 12 months of what happened when they asked for feedback. They identified a flaw in the tender process, and it quickly became clear that the member of staff with whom they were in contact did not have the necessary expertise in the area where the service was being procured. They found that the only way to proceed and get some action on the problem was to make a complaint. That was touched on last week as well. There is an immediate chill factor for businesses that may have concerns due to the additional time that would be required to raise them and the possibility that doing so could impact on further tendering exercises. I get that that is perceived and not necessarily real.

I know that the Department is looking at social value. The FSB has been invited to a meeting in the next couple of weeks to discuss that. One thing that comes through time and again is that it focuses on new actions rather than on what businesses are doing at the minute. You cannot cost social value elements into your tender; from a small business perspective, that goes against the spirit of social value.

On the prompt payment of invoices, members have received our 'Never Better Late' working paper. That outlines everything in detail, but I will capture some of the headline stats from the discussion on the issue, particularly at last week's Committee meeting. From what we can see, about 5% of the invoice total is from central government. The headline figure that we have established, which is limited because of the lack of full publication of data, is that 234,000 or more invoices were paid legally late out of over three million invoices in total. Central government paid around 5,000 of those late, which is 2% of the total, but that does not necessarily mean that central government is doing a great job. I will come on to why a bit of a myth may have arisen about that, on the basis of last week's evidence session and what we have found. Whilst the overall total of about a quarter of a million invoices are from across all of government in NI, we note the variation in performance. However, no area is meeting its targets. That is the principle that we want to get across.

In respect of the data and information, going through the data of the various agencies and bodies is a really interesting exercise because you are looking at PDFs, annual reports and scans of spreadsheets. There is a push now on open data and the publication of data. That should be in a basic spreadsheet format that is easy for people to analyse. We have found that, even now, that is not the case, which makes it really tricky and time-consuming.

On the point of interest in penalties, you will see in the paper that there is little uptake, but there would be significant accrual on the government balance sheet — we are talking in the millions — if those were called in. The liability on that has only increased since the Bank of England base rate increased.

On DOF responsibility, it is really important that we question and are clear about who is responsible for the issue. Responsibility is definitely shared. We can see, just from looking at the issue in more detail in the last couple of years here, that there is a lack of a champion of that in government. There is verbal acknowledgement, but we see little proactive verbal or written action to address it. We would ask who, if anyone, owns the issue or wants to. One thing that is really important to note is that part of this is procurement and part of it is payment and accounting practices. Let us say that, if there is a breach of the 30-day agreement, that is contractual. We know that that is a bit of a grey area, so, if you are working in Construction and Procurement Delivery (CPD), for example, you might say, "Once we've procured, that is beyond us. It goes to the Finance Department", but I still think that it is part of the overall procurement picture.

Central government is at the core. Take the Department for Communities as an example. Although councils are not within the scope of your remit, the Department for Communities is a sponsor Department. We know that because it will send out the circular, guidance and information. There is a letter from 2016 that is referenced in the paper, and it is very much able to determine what is and is not done there. Even if that is not hard per law, there is a soft notion there. You can tell from everything that we read that money is, in effect, flowing through Communities to councils. Therefore, we would argue that it is very much within the scope of that Department.

Similarly, when you look at the Department of Health and central government's figures and those small percentages that were referenced earlier, you will find that there are many thousands — into the millions — of invoices paid through the trusts and various bodies attached to Health that are not captured in central government's figures. That is what we have to note. The same applies to the Department of Education. The Education Authority (EA) is not included in the central government statistics. Quickly, you see that central government, per the data, is a really small portion of it. It is doing well: it is the leader overall, and it probably has access to the likes of Account NI and technology. However, we do not want that to skew the notion that there is not a wider issue here.

On recommendations, first, we need to see an acknowledgement and improvement on what is already required. That is clearly outlined not just in our report but in the law and regulations. It really starts with effective data sharing. The fact that, in this day and age, we are trawling through annual reports just to get a figure that may or may not be there is not right on such an important issue. We can make further recommendations only once we have a full sense of the picture. In the meantime, we need more NI-specific action.

With regard to the opportunities, it was really good last week to see that the Department is looking at a new strategic direction on procurement, and we see prompt payment as being a firm part of that as the months go by and the Procurement Act comes into play. That could be via the Procurement Board or another effective structure. The truth is that it does not matter if it achieves its objective. It would allow a list of live issues versus the longer-term changes that you might want to bring in per the Audit Office report. The appointment, even if it is symbolic, of a prompt payment champion in the Department or somewhere else would show that the issue is being taken seriously. That can also be done in councils, boards and agencies.

From an Audit Office perspective, a 2013 report took a deeper dive into that. That was excellent work. We feel that its expertise and ability to reach into organisations poses the question of whether another piece would be really useful to get to the bottom of the places that FSB cannot, given our position.

A really interesting point from our perspective is the interest in penalties. I pose this question for thought and discussion: imagine you added the penalties and the interest automatically on to government invoices, would that change behaviour? It would immediately touch on the balance sheet of all the organisations that are paying late. That is worth consideration.

Finally, from the UK Government point of view, two bits of work happened in the last year that we worked really hard on with our colleagues in Westminster to get progress. The first is the prompt payment and cash flow review. We had wins there around data and the publishing of that and the scope of the Small Business Commissioner, who is really a lead in trying to chase up late payers, particularly large private-sector businesses. However, the election may impact on that, because new legislation had to come through.

The Procurement Act will come in. We noted that there are some preliminary criteria on insurance that will be removed along with accounting requirements for small businesses. They can prove that in other ways, which is really good and should reduce the cost of entering the tender process. The Procurement Act is all about transparency, and that is really good. We think that that should help with data publication, but we are unclear as to how it will land here. There is a question mark around clarifying that. There are also some things that NI has opted out of. This was touched on last week. When you look at the circulars, you will see that there is clarity required around, for example, whether the 30 days for us will apply right the way down the supply chain, not just at the top. That is a really key issue. There should be KPIs per contract as well as new investigations: a type of ombudsman or body within DOF, like they have in England, could be set up.

I am getting to the end now. It is clear that feedback should be easy, but it should never not be available, as per the example I gave. That is, without a doubt, key. Finally, the good news is that there will be grounds for the disbarment of certain contractors from being eligible for contracts over £5 million if they are shown to be consistent late payers. Thank you, Chair and members, for listening.

The Chairperson (Mr McCrossan): Thank you very much. That was comprehensive and contained some important points. You have touched on some of the issues raised by the Committee, and we appreciate that.

It is important, first and foremost, to congratulate your organisation on reaching 50 years. That is a significant achievement, and the organisation should be recognised as a key supporting body for small businesses, particularly in challenging circumstances. It is also important to put firmly on the record our appreciation to all small business owners out there, who are the lifeblood of our communities. They provide masses of employment in our constituencies and are very significant in our local economy. It is important to thank everybody out there, particularly those who have hung on through challenging times. Congratulations to your organisation on reaching 50 years, and I record our appreciation to all small business owners.

You have raised points that members will want to pick up on, Neil. You briefly touched on the element around councils. The report by the Northern Ireland Audit Office is not relevant to councils, and the remit of the Committee is to focus on what is important in that report. I ask members to be conscious of that, because we need to ensure that our evidence session is entirely relevant to the inquiry. However, I get your point, and it is well made.

Other members will touch on issues around the supply line, supply chains and stuff like that, which you mentioned. Those issues have all been raised. There are a number of things that I want to raise. First of all, you mentioned the 234,000 invoices that were not paid within 30 days. Have you any figures on how often legal penalties for late payments are invoked by suppliers?

Mr Hutcheson: Yes. We are redoing this paper to build it out and bring it up to date, but we understand that the number of cases in which that has happened could be 2,000 to 3,000, which is very small. I will follow up with the exact latest figure on that, but it is extremely small, and we hear the obvious reason for that from suppliers: they are afraid that it will count them out in future.

The Chairperson (Mr McCrossan): OK. That was the next question that I was about to ask you. Central government does not provide monetary figures on prompt payment data. Can you provide any such figures?

Mr Hutcheson: No, I cannot. That will be one of our asks.

The Chairperson (Mr McCrossan): Do you agree with us that that data should be provided to improve transparency and accountability? Is it available in any other jurisdictions?

Mr Hutcheson: Yes, it is. There are two points that I will make in that regard. It is available, and it is published by councils. That is not within the remit of the inquiry, but that is one area that is close. The

key stat is the number of invoices that are queried. Of the 5,000 that were paid late in the most recent year, we cannot tell whether half of them were queried or whether almost all of them were queried and, therefore, there was a "legitimate" or "reasonable" reason for paying late. That is the one thing that you would want to see quickly across the board. If it is a matter of, for example, small businesses not completing invoices in a way that makes it easy, we would do a piece of work to really help in that regard. However, if it is not that and it is around just basic payment processes and administration, we will know that we need to focus on that.

The Chairperson (Mr McCrossan): What other data should be provided on prompt payments?

Mr Hutcheson: We have done a comprehensive list in the report and will put that in our follow-up brief to the Committee. The very first one is the number of queried invoices. The next one is the value, and the percentage that goes to SMEs. If the reporting systems in the Department allow for automation around all sorts of metrics, we would say that, by default, that should be published. That would allow you to start to understand the type and number of businesses that are going for contracts, and, generally, the size of those that are or are not getting in. You could tell all that information from the tender process. You would be able to quickly establish whether it is true or whether it is just perceived that the system is skewed towards certain, or large, organisations. In this day and age, that technology is available.

Mr Stewart: Thanks, Neil, for coming along today and for your evidence, and for all of the work that the FSB does. You gave us some examples of the feedback that small businesses have given you about their experience of procurement. We, as constituency MLAs, hear regularly that it is hard enough for small and medium-sized businesses and microbusinesses to go through the procurement process. It is even harder when you are running to stand still financially to get back the money that you have outlaid to a Department, which has the money sitting there but just cannot pay on time. That evidence is vital.

Which of the 10 recommendations is the most critical from the FSB's point of view? Maybe they are all critical, but could you triage them in that respect? We heard during the evidence last week that the whole thing is not as bad as it seems, that it is a supply chain issue and that the problems arise below central government level, in the stages down through subcontractors. Is that also your experience?

Mr Hutcheson: On the first question, I should know the recommendations off by heart by now, but I do not. There is still a question mark around the data, so having the likes of an Audit Office or someone else to pull together the true figures and get access where we cannot would be really useful. We would then know exactly what we are talking about. We are an organisation that represents businesses, and the Audit Office is fully and wholly independent and has the necessary expertise. That is the number-one recommendation for us.

We would support the appointment of a prompt payment champion, perhaps in the Department of Finance, and a recognition of the issue so that it goes into the business plan or the work of, say, the Procurement Board or equivalent. That would quickly get that on the agenda. The next bit would be the publishing of the data that you have and putting it out there to let people such as us and others look at it. We would try to be constructive and helpful on that.

Will you repeat the second question?

Mr Stewart: It is argued that, at central government level, it is not really as bad and that the problems lie below that first stage in the supply chain and with subcontractors. Is that a fair assessment?

Mr Hutcheson: I partially agree. We have chewed that over in the past week after seeing that. The percentage of invoices overall is small: in the past year, about 160,000 came out through central government statistics, and the percentage that are paid on time might be in the mid-90s, which, in principle, is good. It is not 100%; there are still 5,000 that are not paid on time, and we do not know why. That could be significant.

There are over three million invoices in total, so you get a sense from that of what 5% is. You start to realise that, on one hand, it is maybe not a massive issue for central government, but, at the same time, the Department of Finance is, in essence, at the top of the pyramid when it comes to procurement law, implementation, guidance and the board. It has a soft but influential role in being able to champion prompt payment.

It is also really concerning to suggest that all of those other millions of invoices are not in the pot. It is partially right, but it would not be right to assume that central government does not have a role; it, arguably, has the greatest role. Ultimately, for the Department of Health and other Departments that have large outside agencies, the permanent secretary and the Minister are the accounting officers and are responsible for those extensions of their Departments. We see that as a key influence.

Mr Stewart: We all agree with that. Thanks, Neil.

Mr T Buchanan: Thank you for being with the Committee today. Small businesses, particularly in the construction industry, are the backbone of our economy, and anything that can be done to free up late payments to them would be very welcome. Recommendation 9 of the FSB paper states:

"The Department of Finance, in particular, should produce recommendations of improvement to enhance their performance against the target of 10 working days."

What impact does not meeting the 10-day targets have on businesses?

Mr Hutcheson: It is interesting to think about this question: if you had to choose between some businesses being paid in 10 days and all being paid in 30 days, which would be better? Collectively, there might be the notion that all being paid in 30 days should be the aim. The 10-day target is really good and shows that it can be done at a high level. That is why we put that recommendation in, but, to address the previous question, of the 10 recommendations that is probably less of a priority. It is not reasonable for anyone to expect to be paid within 10 days or they will go out of business: 30 days is the aim. We felt that it would be good to put in the 10-day target, because it would show that you could easily go even further and that you could apply the same methodology to the 30-day terms.

Mr T Buchanan: Thank you.

Mr Boylan: Thanks very much, Neil. You were definitely paying attention last week, and you have done your homework well, so fair play to you. Thank you for your comprehensive presentation. I will make a couple of points.

The pathway from procurement to the end user and delivery is long, and, last week, you heard the accounting officer talk about a way forward with the strategy and the legislation that will come into force in the autumn. How do you rate that? How will that improve working relationships, payments and all the things that impact on or support small and medium-sized enterprises?

Mr Hutcheson: There are really good parts to the Procurement Act. Our first question seeks clarification on whether those parts that are really good stuff — to do with ensuring that KPIs are attached to payment; you would have to put three KPIs in a contract, of which one could be payment performance, meaning that there would absolutely be a lens on that — will apply here. We are still not entirely sure that every part of that will be implemented here. That is the first question for clarification. The second point is that, if that is implemented here, you could not go ahead with the way in which you currently publish the data. There would be no point in doing all that without showing people the stuff that you should be doing now and that the new Procurement Act brings in. Provided that there is clarification of those two points alongside it, we see cause to expect a healthy improvement.

Mr Boylan: One of your recommendations is that:

"The Department of Finance should introduce the UK Government's administrative target of paying 90% of undisputed and valid invoices from SMEs within five days."

How realistic is that?

Mr Hutcheson: It is happening in some cases. As I said in answer to Mr Buchanan, if we had to choose, 30 days is a fair period for everyone to be paid within, but technology and the ability to align purchase order numbers is really good now. Money comes in and goes out almost automatically, so it is important to use that where you can. One reason why it is good if that happens is that, if you are the prime contractor with a chain of five to 10 businesses down the line and you get paid within five days, that could reduce the time within which those businesses are paid. That is why we put that recommendation in, but, again, the principle is not that we need to have payments within five days. I hope that makes sense.

Mr Boylan: Thank you.

Mr Gildernew: Thank you, Neil, for the presentation. I come from a background of small and medium-sized businesses. Fairness and regional balance are hugely important, but benefit to the public purse is equally important. As many of our small to medium-sized enterprises see themselves as being shut out or are shut out, you do not get that value. Some of those businesses are the most innovative and agile of companies. In some ways, the smaller they are, the more of both those things they can be, so, if the system does not facilitate engagement, the public purse and the people who procure the goods lose that expertise. What would the FSB see as the main barriers to small businesses in relation to procurement, apart from prompt payment? I understand that that is a barrier in itself, but, aside from that, what are the main barriers?

Mr Hutcheson: The issues that I mentioned earlier are probably the main symptoms of what is occurring in the system. If you were to go upstream a little, the barriers would be, probably, partly the turnover of staff, the expertise, the ability to assure various things such as value for money and that your procurement is done to the level of audit requirement and you do things right. We get the balance and the tension there, so you cannot necessarily speed through tenders.

On the small business side, an acknowledgement that, with different contracts, different sizes of business and businesses that have and have not procured before will approach things very differently. With the advancement of technology, we see that getting only net better. For example, to build into the system the ability to load a profile and take out a lot of the work that maybe you did previously would ease those symptoms.

Overall, it is probably just the clunkiness of the system and user experience combined with some of the things that I mentioned, such as ability to get feedback and the facility that, if you make a challenge, the member of staff in question can say, "Yeah, OK, there is a flaw here. You do not necessarily need to make a complaint", and they can use their initiative to resolve or triage a problem.

The Chairperson (Mr McCrossan): How do delays affect the value-for-money element of the tendering process? You touched on that. Could you elaborate a wee bit?

Mr Hutcheson: There could be hidden elements, but one thing that we got from our discussions with businesses is that there is a real chill factor. If an experience is bad and the process takes a lot of time, you may be less likely to apply next time, and the fewer people applying for a tender, the lower the chances of getting an offer that is competitive.

There is also the reputational aspect that you will have seen in the report discussion last week and the perceived notion out there. It is probably a little unfair, but there is a sense, no matter who you talk to, that it is not working as it should, and that is not good either. I could not go beyond that to say specifically how delays affect the value-for-money aspect.

The Chairperson (Mr McCrossan): That is an accurate reflection of what we hear on the ground, so we appreciate that.

The submission, which is comprehensive and much appreciated, states that late payments across the UK were responsible for 23% of insolvencies. Have you any figures relevant to Northern Ireland?

Mr Hutcheson: In our new version, we do. Since the publication of that paper, we have done work with audit specialists in order to dig into the figures more. I do not have that here today, but I will make sure that the new version is sent to the Committee.

The Chairperson (Mr McCrossan): It would be helpful if you could share that. It would be much appreciated.

Has the FSB attempted to engage with public bodies about the problems that you hear from your members, and what has the response been?

Mr Hutcheson: Yes, we have. Not within scope but, given that there was an election last year, we met parties and councils, and there was good commitment in manifestos and so on around the issue. In other work that we do with arm's-length bodies (ALBs) or agencies, we always make sure that the issue is on the agenda. We met central government leads as well, and that is why I am able to point,

hopefully fairly, to the notion that there has maybe not been the action that we had hoped since we released the paper just over two years ago.

The Chairperson (Mr McCrossan): That is helpful.

Another interesting suggestion that you made under recommendations was scorecards. You set out suggestions for information that could be included on scorecards associated with prompt payments. What purpose would such scorecards serve?

Mr Hutcheson: What we have produced here is, we believe, the first of its kind. As a result, prompt payment government league tables will happen in England as well. If that information was published, we would not have needed to draw it all together, but, for us, it is clear: the more it is out there, the more you are thinking about the issue, and, through just thinking about it, you might treat it as more of a priority. There could also be a sense of competitiveness or ways in which someone would say, "Look, I don't want to be bottom. What can we do about this?".

The Chairperson (Mr McCrossan): That is not a bad suggestion.

Ms Forsythe: Thanks, Neil, for being here. I echo what other members have said; you are hearing locally all the time about how small and medium-sized businesses feel as though they are being pushed out or blocked from getting access to public-sector contracts, and it is a great source of frustration for them. They can come in only as subcontractors and not get the full value of access to it themselves. They obviously feel that there are significant barriers. We have new legislation coming through. We talked about it last week. It will come with a new e-tender system. I am keen to ensure that, in areas such as South Down, which I represent, there is huge engagement in rural communities as well as in towns and cities to ensure that businesses understand what is coming out. Is there sufficient engagement with SMEs on what procurement will look like under the new legislation and what the new e-tender system will be?

Mr Hutcheson: To answer that clearly: no. However, we have a really good opportunity; it is not too late. Imagine that the system is in full development. We have a really good example in the way in which the Home Office engaged with FSB when bringing in its new skills-based immigration system. I do not want to exaggerate, but, over a period of six to nine months, we were in virtual rooms, looking at the system and user journey experiences, doing focus groups with businesses, doing everything that we could to maximise the usefulness of the system in advance. That might not be perfect, but it minimises the chances that a system is not fit for purpose. We would like to see something similar here. Engage with us during the summer to ensure that, one, we can improve whatever comes in, if there is still time, and, two, we can do workshops and get information out that helps businesses.

Ms Forsythe: That would be great because, again, last week, in giving evidence, officials talked about talking to existing suppliers about what it will look like when it changes but not about how they would explain it to or engage with those who are not accessing it or how to make it more user-friendly. That would be really useful. That is a good recommendation.

Following on from last week's session, I submitted a question to the Finance Minister just to get a little clarity around prompt payments, as the Department of Finance runs the shared services system for payments across the whole of the Civil Service. I got the details for the past three years for payments that were made within 30 days. It is important to note that the central government target is to make those payments within 10 days. The fact that, over the past three years, over 15,000 were not made within 30 days is really poor.

My question, just to follow on from that, is not just about prompt payments. I would like to hear your feedback on the model to pay businesses through public-sector procurements. John touched on that. With the design and policy of public-sector procurement, often, it seems that the provider is out a lot of money — tens or hundreds of thousands of pounds — for, perhaps, a financial quarter before getting anything back. Is it a significant barrier to smaller businesses taking on that sort of contract to be so much out of pocket before getting anything back, coupled with the fact that some of them then do not get paid for another 30 days beyond that? Should we look at that and reflect it in the early payment policies?

Mr Hutcheson: We know that there is a distinction in central government because there is the Account NI system. That has the advantage of being really speedy. That does not feed out, necessarily, to all the other agencies and bodies. Where you would be able to push ahead, in the likes

of Account NI in the very centre of government, you should try to do that, not only because you can but because it shows others what is possible, and it may be that other agencies could then become part of Account NI.

I am conscious that it is really easy to complain and come up with things that would be almost utopian-sounding. We do not expect this overnight. Hopefully, I have been reasonable in how I have come across about what, we expect, could be done with little or no funding. In that context, the biggest issue is probably that a business of that nature would be in a contract situation with other businesses, and so there is probably one business that would be paid, and the quicker it is paid, the more likely the others follow in a chain.

There is a tool called a project bank account. Maybe the Committee could get more info on that. From what we gather and from the conversation that we had a couple of years ago, the purpose of a project bank account is that you do not necessarily rely on a contractor to make the payment. Payment is held centrally through a bank account and is, in effect, automated, so that, when work is done, it goes to the contractors. That cuts out the issue of people being paid late or months later, further down the chain. From what we have gathered, it is our perception that that tool is not being used as well as it could be. One reason that we have heard for that is that banks do not want to engage with it. That is a question that we have in our current work, and we would love to follow up on it. It would help with what you are getting at.

Other than that, I am not sure that we are at the stage at which we could prepay the full amount, but if there were a track record and assurances in place, you could consider prepaying 50% or more, potentially, to contractors to take away that burden while the work is being completed.

The Chairperson (Mr McCrossan): You recommend the creation of a prompt payment champion, for instance. What would that role involve? What power would such a person have? What would be the benefit of that role?

Mr Hutcheson: There are examples akin to that, such as a Climate Change Commissioner or various ombudsman-type figures. History tells us that, if those people are in place, issues are taken a lot more seriously. It is a matter of judgement whether you need that or whether there is an acceptance in, say, the Executive or overarching government that we care about the issue and do not need to create such a figure. We feel that, because we have not seen that to date, there is a need for somebody to take a grip of this. Typically, when someone takes a grip in all of the scenarios across different policy issues and says that they will do it, things improve and things happen. That is the context to the recommendation. If we were getting the results and it was not an official role — a commissioner-type role — that would be great, but if, as time went on, we were to see less action, our call would transform and turn into, "We need more done about this". That is how we view it.

The Chairperson (Mr McCrossan): It is an interesting suggestion.

You have touched on the role of a commissioner. How effective is the Small Business Commissioner? What benefits could that bring to the public sector?

Mr Hutcheson: The perception from previous years is that the Small Business Commissioner's role does not, perhaps, carry enough weight. There has been a review of the Small Business Commissioner's powers, alongside the prompt payment and access to cash reviews. We are pleased to say that those powers will be ramped up a bit. That will help. The Small Business Commissioner came along to the launch of our paper. Within its remit, the commissioner is extremely effective and supportive.

The Chairperson (Mr McCrossan): With those powers enhanced, would the commissioner not end up, by default, as the prompt payment champion?

Mr Hutcheson: Yes. The question we posed is whether someone who represents the wider UK is sufficient, when a lot of the power to do this is in our hands. The big or primary focus to date has also been on private-sector prompt payment, which we have deliberately left out of the scope of this, for obvious reasons. There is a public and private distinction, but there is also a need for somebody in government in NI at departmental or ministerial level to, at least, prioritise that.

The Chairperson (Mr McCrossan): Thank you, Neil. That is helpful.

David Attenborough MLA. *[Laughter.]*

Mr Honeyford: I am not that old; flip me.

The Chairperson (Mr McCrossan): David Honeyford. Why I was thinking about David Attenborough I do not know.

Mr Honeyford: What goes on in Daniel's head?

Mr Boylan: Is this an environmental question?

Mr Honeyford: I am going in a completely different direction. Only joking, Neil. Thank you so much for coming in.

This is something that we have talked about. I have been there; I had a small business. I want to tease out a couple of things. Leaving aside the prompt payment issue, albeit I know that it is part of it, are there any specific aspects of the report on procurement that the FSB would like to raise generally in the inquiry?

Mr Hutcheson: Our perception of the report is that it is excellent; it is, maybe, just above a level of practicality, as I have touched on. It is strategic in nature, with a view, I assume, that, if you sort those problems, the flow-through will also improve. I like the notion of data being published, first and foremost, because that will help you understand what is being talking about. The only thing that we would have asked to be included, had we been asked, would have been something around the prompt payment element of procurement. The report is comprehensive, and we fully agree with it.

Mr Honeyford: The stuff that has come through is excellent. There is that high-level part of it, but payment is part of procurement: when you buy something, you pay for it. I would love to tease that out slightly. Northern Ireland is a microbusiness and small business environment. It is not necessarily the small business that wins the tender, but that small business could be a subcontractor to the person who wins the tender, and there is a level below that. I have had people in my office who have been there, done that and seen that the bigger company that wins the tender, whoever it is — I do not want to name companies — gets paid in 30 days, but the subcontractor that works for them and actually delivers the work gets paid in 120 days. The bigger company cash-flows that business to allow it to win the tender, runs for a bit and then flips the company, such that the guy at the bottom, who did the work, gets nothing. Is there any mechanism that could be put in place to protect the person at the delivery end of the procurement process? Do you have any thoughts on that?

Mr Hutcheson: Yes, I completely agree. It goes without saying that that is unacceptable. Right now, that should not be happening. The project bank account function that I noted is designed to stop that, so that everybody gets paid in 30 days for work that is done along the chain. It is segmented at the top so that you do not have to rely on the private sector or, typically, a larger contractor flowing payment down the chain. That is the objective of that function, so it has clearly not been implemented.

I will just bottom this out, if that is OK. The bit of the Procurement Act that I referenced means that the 30-day payment should flow contractually and legally across and through the supply chain. Come October, if we are doing what we should be doing, that bit should be in place here. It should prevent that; it would be an effective breach of contract. The disbarment element that I referenced would mean that, for contracts over £5 million, you would have grounds to disbar the prime contractor from future contracts if they were seen not to be paying on time. That should clearly have an impact.

Mr Honeyford: There are two parts to that. In relation to the disbarment part, a couple of times during the evidence session, you mentioned the fear experienced by the small business. That disbarment happens only if somebody reports that behaviour. If a small contractor is effectively out 60 days, 90 days or 120 days, that is two, three or four months of work, labour and cost. The fear that you will then not get more work is massive. Disbarment is absolutely great, but will it get to the point of being able to disbar as part of the procurement process?

Mr Hutcheson: From what we read, if it is implemented correctly, it should. You could say that the project bank account is a better idea, because that takes payment out of the hands of the contractor. In effect, the procurer could signal, "Payment goes". That therefore makes the process objective and not about relationships or lifting the phone to someone above you in the chain. That would be an ideal

model. However, if you won a three-year contract, for which you were self-reporting, to deliver a construction contract or a building and that contract was proven through the three-year period but it then came out that there had been 60, 90 or 120 days before payment was received by subcontractors, you would think that, in practice, that should be fed in objectively through the contract reporting mechanism. If payment did not happen within 30 days, you would think that a black mark should be lodged against that contractor on a system and that that would mean that, when a further contract goes ahead, that contractor could not apply. That is our understanding of what should happen in an ideal world.

Mr Honeyford: So that I can totally understand that project bank account, are you saying that that would be part of the procurement process? How would that work in practice, when a tender is won? Say we were talking about the Department for Communities, the Department for the Economy or whatever, how would that project account work in practice?

Mr Hutcheson: That goes beyond my remit and ability to talk about it. The best thing would be to get a lead from the Department to explain exactly how it should work in practice and what is working. I would not be able to do that justice. I hope that is useful.

Mr Honeyford: It is: 100%.

The Chairperson (Mr McCrossan): I will touch on another point from one of the recommendations. You asked for statutory compensation and interest to be automatically added to late payments. What about cases in which an invoice or the quality of service is being disputed?

Mr Hutcheson: We make a distinction between those that are queried or disputed and those that are paid late from an administrative point of view. The first thing that needs to improve is the publication of which numbers are queried and which are not. We would then focus on saying that there is a case for Departments and agencies to automatically self-police and go, "OK, we are late here. There is no good reason for it. We are going to add on the fee of up to £100, and the interest of 8% plus the Bank of England base rate". That de-risks it completely for the SME or the microbusiness, because they are given what they are owed. It is self-accountability, which is the way it ideally should be.

The Chairperson (Mr McCrossan): You touched on that earlier. I just remembered. Apologies.

Members, do you have any other questions? No. Is there anything that you would like to add, Neil?

Mr Hutcheson: No. Thank you very much for your time. I really appreciate it. We will follow up with the brief.

The Chairperson (Mr McCrossan): Comptroller and Auditor General, do you have anything to add? No. OK.

Thanks very much for being with us and taking our questions. We very much appreciate it.

Treasury Officer of Accounts (TOA), do you have any questions?

Mr Stuart Stevenson (Department of Finance): It is just a brief comment, Chair. I thank Mr Hutcheson for his evidence, and I want to back up a couple of comments from our perspective. As TOA, it is always good to hear that the information in the annual reporting accounts is being used and analysed and is helpful. I know that it is difficult to dig it out from the depths of the performance reports and so on, but, from a transparency point of view, it is important that it is there at least.

DOF publishes prompt payment tables, but I agree with Mr Hutcheson's comments. I had a look this week, after last week's evidence session. The analysis that is there is limited, and it highlights your point about where the issues lie. Account NI colleagues in our shared services centre seem to generate those reports. For 2023-24, they are looking at, I think, around 168,000 invoices, which is significantly lower than the number you quoted. Within that, it looks as though Departments achieved the 10-day target in around 91% of cases, with just a tick below 97% on the 30-day target. You commented that the problems seem to lie outside, in the arm's-length bodies and so on. The direction of travel for us is to look at why that is happening.

I also reiterate the comments about project bank accounts. I look after the banking contract for the central Departments, and I was involved when we brought in project bank accounts in 2016. That was very much to help in procurement from the construction industry and to ensure cash flow through to subcontractors. The feedback that I have got anecdotally, Chair, is that the take-up — the number of project bank accounts — is low; it is certainly a lot lower than we anticipated in 2016 when we brought them in. It is a good area for us to have a closer look at, and I am sure that my colleagues who were here last week will deal with that more comprehensively in the responses as we move ahead.

The Chairperson (Mr McCrossan): Thank you, Stuart, and thank you, Mr Hutcheson.