

Are you paying your bills on time?

Outcome of the NHS European Office Consultation

7 September 2009

Summary

An NHS European Office consultation on EU proposals tackling late payments highlights that NHS organisations are committed to demonstrating public sector leadership through good payment practices. However, the proposed 5% fixed rate late payment fee (in addition to statutory interest and recovery fees) is seen by most NHS organisations which have responded to be an arbitrary and disproportionate penalty which could have un-intended consequences. Level playing field issues between the public and private healthcare providers have also been highlighted. This note provides a brief reminder of what is proposed, summarises the NHS views which have emerged from this consultation and describes the next steps.

The EU proposal

The EU proposals are set against the current economic downturn and aim to help businesses by tackling late payments particularly within the public sector. The European Commission proposes a double incentive to deter the public sector from making late payment and to encourage the private sector to exercise its rights. This would be achieved through two measures applying to the public sector only:

- A 5% late payment fee on the amount due on undisputed invoices (in addition to statutory interest and recovery fees)
- Payment terms for public authorities not to exceed 30 days unless explicitly agreed & duly justified

New key provisions that would apply to both the public and private sector include:

- Automatic fixed rates of compensation for recovery costs (including a fixed 1% fee on invoiced amounts over 10,000 €)
- Stronger measures on unfair contract clauses

NHS Commitment to good payment practices

The NHS organisations that replied to this consultation welcome the aim of the EU proposals and are committed to demonstrating public sector leadership through good payment practices. This is being achieved through compliance with the **Better Payment Practice Code** which gives the NHS a target of paying 95% of bills within contract terms or in 30 days where there are no terms agreed. The performance of NHS organisations on the BPPC is published in their annual reports which means that it can be easily monitored and made accessible to creditors.

Moreover, many NHS trusts have readily signed up to the new **Prompt Payment Code** which was launched by the Government and the Institute of Credit Management in December 2008. By signing the code, NHS organisations commit to pay suppliers on time and according to their agreed terms, to give clear guidance to suppliers on contract terms and to encourage good practice through the supply chains. Suppliers can verify signatories to the code on the Prompt Payment Code website. NHS organisations are also improving their payment practices through the use electronic payment services which help increase the efficiency and promptness of payments while reducing administrative costs.

While NHS organisations are already engaged in a number of national initiatives to improve payment practices and would welcome further measures to achieve this, there are some concerns about what is being proposed at EU level. Notably, these concerns relate to the proposed 5% late payment fee and the lack of a level playing field between public and private healthcare providers which this proposal could create.

5% Late Payment Fee

NHS organisations have expressed concern that the proposed late payment fee is both arbitrary and disproportionate and could prompt a number of undesirable consequences. Key concerns include:

- **excessive** and **disproportionate** financial penalties for the NHS
- creation of an **arbitrary** measure particularly as there is no direct link to actual costs incurred by suppliers or to the European Central Bank base rate
- creation of a non level playing field between private healthcare providers
- the likelihood of an increased number of invoices formally disputed to resolve minor difficulties
- the possibility of invalid invoices being processed through the system and paid due to pressure to avoid penalties
- manipulation of the system by unscrupulous suppliers



Disproportionate penalties

The NHS spends £20 billion a year on goods and services.

Under the current proposal, this means that even if full compliance with the national BPPC target was achieved, suppliers would still be entitled to collect penalty fees from the NHS of about £50 million per year, plus statutory interest, plus recovery costs.

Extended credit terms

Most NHS organisations have responded that restricting payment dates to 30 days (unless a longer period can be reasonably justified) between the NHS and its suppliers appears reasonable and should not present problems within the NHS. However, some Foundation Trusts have raised a few specific issues:

- Historically the use of extended credit terms has not been common practice in the NHS, but these agreements are increasingly being used by FTs. This is linked to the fact that FTs are expected to act in a commercial manner with cash management being a priority.
- Extended credit terms are commonly used in the private sector to help with cash flow and such terms are recognised to be as much a part of procurement decisions as price and quality. There is no reason why the NHS should not be able to benefit from the better cash flow and cost savings which can be generated through extended credit terms in the same way as the private sector. Use of the words “duly justified” suggests that extended credit terms would be an exception rather than common place.
- Given the increasing involvement of the private sector in delivering core public services, the distinctions being made in this proposal on issues like the 5% late payment fee and restrictions on extended credit terms could create non level playing fields between the private and public sectors.

Next Steps

- The NHS European Office will be raising the key concerns that have emerged from this consultation with EU decision makers and will be seeking to have these views taken into account during the legislative process.
- In doing so, we will build alliances with other public sector stakeholders and work closely with Business Innovation and Skills, (the lead government department) on this issue and the Department of Health.
- NHS organizations will be kept informed of developments, but please do not hesitate to contact the NHS European Office if you have questions or would like further information on this issue.

Contact Tracy.Cook@nhsconfed.org or see the NHS European Office [website](#)