

MONEY
ADVICE TRUST

BUSINESS
DEBTLINE

NATIONAL
DEBTLINE

WISER
ADVISER

Consultation Response:

Increasing the scope and powers of the Small Business Commissioner

Response by the Money Advice Trust

Date: December 2020

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

The Money Advice Trust welcomes the opportunity to respond to this consultation on the scope and powers of the Small Business Commissioner.

In 2018 we published our “Taking care of business”¹ research, exploring some of the key challenges facing those who contact our Business Debtline service. This research revealed that, pre Covid-19, one of the greatest challenges was dealing with late payments and was a significant driver of financial difficulty for those who experienced this issue. Almost half (45%) of Business Debtline clients surveyed reported that they had experienced problems with late payments in the past.

As highlighted in the executive summary of the consultation document, the outbreak of Covid-19 has exacerbated the issue of late payments. Our recent research with small business owners across the UK² reveals just how much the issue of late payments is causing financial difficulty for those small businesses and self-employed people struggling due to the impact of the outbreak. Over a third (38%) of people surveyed said their business had experienced an increase in late payments since the start of the outbreak, and almost three quarters (72%) said it was making their financial problems worse. 55% of self-employed people said they were worried that late payments would make it harder for their business to recover from the outbreak.

This is supported by research from the Federation of Small Businesses which shows that since the lockdown the issue of late payments and the impact they have on cash flow have only worsened for many small businesses. 62% of the 4,000 firms surveyed as part of their research had been subject to late or frozen payments since the beginning of the Covid-19 outbreak.³

As we explore in our response, the government’s willingness to strengthen its approach in these areas by expanding and enhancing the remit and powers of the Small Business Commissioner is very welcome.

¹ Money Advice Trust (November 2018) [Taking care of business: Eight key challenges facing small business owners](#)

² Money Advice Trust (December 2020) [Back to business: Supporting people in self-employment to bounce back from Covid-19](#)

³ FSB (June 2020) [£23bn late payment crisis deepens through lockdown, new report finds](#)

Responses to individual questions

Question 1: To what extent do you agree that the Commissioner's complaints handling function should be extended to allow for small business to small business disputes?

Strongly Agree

There appears to be a worrying trend toward late payments being used as a standard business practice, and this can have a domino effect through the supply chain, whereby small businesses do not pay other small businesses on time due to being subject to late payment practices themselves.

Almost three in five (59%) of small business owners we surveyed said they thought clients used late payments as a means of managing their own cash flow⁴. Almost all, 87%, of those surveyed, said that late payments were having a negative impact on their wellbeing.

Almost half (44%) of those surveyed said they had experienced late payments from other small businesses. However, as it stands, this is outside of the Small Business Commissioner's remit and can be a challenge for small business to deal with.

- ✓ **We therefore strongly agree that the Small Business Commissioner's complaints handling function should be extended to allow for small business to small business disputes.**

Question 2: To what extent do you agree that the review and report function in proposal 2 should be made available to the Commissioner?

Strongly Agree

⁴ Money Advice Trust (February 2020) Business as usual: A spotlight briefing on late payments and their impact on small business owners in financial difficulty

While late payments are one of the main challenges for small businesses, and it is vital that more action is taken to tackle the issue, as this proposal rightly highlights late payments are not the only problem faced by small business owners.

Our research⁵ into the issues faced by callers to Business Debtline, who are struggling with problem debt, reveals some of the other key challenges faced by small businesses:

- **Low and uncertain income:** very low and irregular income can be an issue for many of the people we help, with 39% of those surveyed saying that their business' gross annual income was below £25,000. People who are self-employed tend to earn lower incomes on average than employees, giving rise to particular challenges. The added uncertainty of income serves to exacerbate these.
- **Use of banking products:** people who are self-employed tend to use a personal current bank account for managing their business finances, which can complicate their finances and lead to debt problems. Two in three Business Debtline clients surveyed said that they use a personal current account to manage their business finances. Often this is the same current account they use for managing their household finances.
- **Business management skills gap:** people who enter self-employment do not always have the experience and skills needed for running their business. While someone might be passionate about a business idea, or skilled at a particular trade, it does not necessarily mean they have the business acumen required to help them succeed on the business side. Business failure is one of the main reasons our clients said they fell into debt - there is no doubt that lack of essential business management skills is a key contributor to this in some cases.
- **Vulnerable circumstances:** Our recent *Back to business*⁶ research looking at the impact of Covid-19 on self-employed people and their finances finds that 29% of people surveyed have fallen behind on one or more bill or credit commitment as a direct result of Covid-19. Business owners experiencing debt often consider themselves to be in a vulnerable situation, and other issues such as bereavement, or an underlying health condition, can also significantly impact business owners' ability to manage their business finances.
- **Problems with tax and benefits:** calculating and declaring tax can often be a challenge, and tax bills sometimes come as an unexpected surprise for people who run small businesses. The complex rules, systems and forms around tax and benefits can be a challenge to navigate. A significant proportion of the people we help are in receipt of benefits, as well as being self-employed or running micro businesses, again indicating how low and variable incomes tend to be an issue. Before the outbreak of Covid-19, claiming benefits as a self-employed person was complicated due to factors such as their often irregular

⁵ Money Advice Trust (November 2018) [Taking care of business: Eight key challenges facing small business owners](#)

⁶ Money Advice Trust (December 2020) [Back to business: Supporting people in self-employment to bounce back from Covid-19](#)

and uncertain incomes and the existence of the Minimum Income Floor (MIF). With the MIF due to be reinstated at the end of April next year, this is likely again to be a challenge for those still struggling with the impact of Covid-19 on their business and income.

- **Lack of financial resilience:** saving for the future can be difficult for people who are self-employed and have lower incomes. Lack of adequate income, and variable income, was one of the main reasons that many of the people who contacted Business Debtline before the Covid-19 outbreak reported not having contributed to a private pension or savings.⁷ For many, the impact of Covid-19 has only contributed to this lack of financial resilience. Half of the people we surveyed in May 2020 who had contacted Business Debtline for help with problem debt reported having already used all savings that they had to deal with the financial impacts of the crisis. The vast majority (81%) of these people were drawing on savings of £2,500 or less.⁸
- **Experiences with creditors:** whilst many people have positive experiences with creditors and come to arrangements to repay their debts, we also see many cases where callers to Business Debtline report feeling that they had not been treated fairly by their creditors. This was the case for around one in three people surveyed as part of our *Taking care of business* research.⁹

The outbreak of Covid-19 has undoubtedly exacerbated many of these issues, with many self-employed people and small business owners having been particularly hard hit by this crisis. As outlined above, we are now seeing many more people falling behind on their bills or credit commitments, with one in six falling behind who were not experiencing problem debt before the outbreak.¹⁰ Financial resilience, where it existed for some, has also been hard hit, and future recovery is still far off for many. Self-employed people have real concerns about how their business will recover from the recent outbreak. 66% of the people we surveyed recently expected the negative impacts of the outbreak on their business to last a year or more, with 37% expecting it to take more than a year for their business to return to pre-Covid income levels.¹¹

It is vital that self-employed people and small business owners have the support they need as they emerge from this crisis, and that action is taken to help them recover and thrive. To ensure that the self-employed workforce and small businesses are able to continue making a valuable contribution to the economy, it is vital that there is a clear understanding at the policy-making level of the challenges that they face. Furthermore, this understanding should be used to ensure any policy decisions that impact them do so in a way that supports their recovery and is not contradictory to this aim.

We recently called for the Government to introduce a dedicated Self-employment Recovery Strategy to identify and deliver the longer-term measures needed to secure

⁷ Money Advice Trust (November 2018) [Taking care of business: Eight key challenges facing small business owners](#)

⁸ Money Advice Trust (August 2020) [At the business end: A spotlight briefing on the impact of Covid-19 on Business Debtline clients.](#)

⁹ Money Advice Trust (November 2018) [Taking care of business: Eight key challenges facing small business owners](#)

¹⁰ Money Advice Trust (December 2020) [Back to business: Supporting people in self-employment to bounce back from Covid-19](#)

¹¹ Ibid

the recovery of the self-employed sector as a whole. This should include considering the role of training and the provision of accessible business and financial advice, as well as financial support.

It is our view that the Small Business Commissioner is well placed to act not only to help small businesses in tackling the issue of late payments, but also on wider issues facing small business owners. This includes playing a key role in supporting their recovery from the coronavirus outbreak as part of a dedicated recovery strategy. This would mean acting as a representative for the sector and feeding in knowledge of the particular challenges small business owners face to inform policy decisions. .

- ✓ **We therefore strongly agree that the review and report function as outlined in proposal 2 should be made available to the Commissioner.**

Question 3: To what extent do you agree that the power in proposal 3 should be made available to the Commissioner?

Strongly agree

We know from our own research that small business owners are sometimes reluctant to report their experiences with late payments using the tools currently available to them, including through claiming statutory interest through the Late Payments of Commercial Debts (Interest) Act. Four in 10 Business Debtline clients who had experienced late payments (39%) said that they were worried that if they chased late payments, they would lose future business.¹² The reason most commonly provided is a fear of damaging existing business relationships.

The ability for the Small Business Commissioner to investigate complains either on their own initiative or from a third party would help to mitigate these challenges and ensure poor payment practices can be dealt with proactively. In particular, the ability to investigate complaints on the basis of an anonymous complaint by a third party would allow small business owners to submit complaints where they are fearful that, if this were identified to them, it could jeopardise a valuable business relationship.

Question 4: To what extent do you agree that the power in proposal 4 should be made available to the Commissioner?

Strongly agree

¹² Money Advice Trust (February 2020) [Business as usual](#)

In order for the Commissioner to be able to act in suspected cases of poor or unfair payment practices, (in cases where either a small business or third party has submitted a complaint), the Commissioner needs to be able to investigate suspected cases thoroughly. To do so requires the power to compel the disclosure of information in connection with the investigation of a complaint.

- ✓ **We therefore strongly agree that the power in proposal 4 should be made available to the Commissioner.**

Question 4.1: To what extent do you agree that the Commissioner should be able to issue an information notice?

Strongly agree

By their very nature, late payments negatively impact small businesses due to the effect that the delay in payment has on the ability of small business owners to manage their business finances. It is therefore vital that any complaint and investigation process aimed at tackling the issue does not add any unnecessary further delay to payment where poor or unfair payment practices are identified.

We believe, therefore, that to ensure that complaints are investigated in a timely manner the Commissioner should be able to issue an information notice directly to the subject of the complaint in the first instance. Inability to do so, if for example if the information notice is required to be issued by a third party, could have the effect of unnecessarily slowing down the investigation process. This has the potential to exacerbate the impact of late payment on the complainant's business where poor or unfair payment practices are subsequently confirmed.

- ✓ **We therefore strongly agree that the Commissioner should be able to issue an information notice.**

Question 4.2: To what extent do you agree that the Commissioner should be able to apply to the Court for an order enforcing an information notice?

Agree

As outlined above, it is vital that the Commissioner can investigate and conclude investigations into complaints in a timely manner, so that cases can be resolved as soon as possible to mitigate the negative impact on small businesses income where poor or unfair payment practices are confirmed.

- ✓ **In cases where the Commissioner has issued an information order, and the recipient has not responded within a set and reasonable time period, we believe the Commissioner should then be able to apply to the court for an order enforcing an information notice.**

Question 4.3: To what extent do you agree that the Commissioner should be able to issue a civil penalty if a notice recipient does not comply with an information notice and to recover the amount of the penalty as a debt (through court proceedings if necessary)?

Agree

In cases where an information notice request by the Commissioner is not responded to within the time period set, there needs to be an avenue by which the Small Business Commissioner can escalate the request to ensure that the complaint is able to be investigated fully and within a reasonable time period. This should also act as a deterrent to businesses from non-compliance both with poor payment practices and with non-compliance with an information request.

However, action for non-compliance with information notices does need to be proportionate to the size of the business and the nature of the poor practice, in order to ensure small businesses aren't pushed into further difficulty.

For large businesses, for example, a civil penalty notice seems appropriate. In these instances, it is also important that the Commissioner has access to an avenue of redress where civil penalty notices remain unpaid within a set time period, such as through the court system.

However, an alternative approach may be needed where the subject of a complaint is another small business. As we explored earlier in our response, small businesses may end up making late payments because they themselves have been subject to late payments from other suppliers. In these instances, further penalty charges are unlikely to help the situation. Instead, further reminders could be issued and civil penalties should only be used when all other options to secure compliance with an information notice issued to a small business have been exhausted.

It is also important that small businesses subject to an information notice should be given adequate and reasonable time to respond, with access to a mechanism for applying for an extension of time in extenuating circumstances.

Question 5: To what extent do you agree that the power in proposal 5 should be made available to the Commissioner?

Strongly agree

We agree that the Commissioner should be given the power to issue a decision notice in cases where poor or unfair payment practices are identified, in order to ensure payment and prevent in so far as possible any further delay in receipt of payment. It is important that complainants are compensated for the impact the late payment has on their business. This means compensating not just for the monetary value of the late payment itself, but the impact that the time taken for the payment to reach the complainant has on their business finances overall.

- ✓ **The Commissioner should, therefore, have the power made available to them to take this action outlined in proposal 5.**

Question 5.1: To what extent do you agree that the Commissioner should have the power to issue a monetary award where there is a finding that payment(s) are due to a small business complainant and have been unfairly or unreasonably delayed or withheld by the respondent?

Strongly agree

In cases where poor or unfair payment practices are identified by the Commissioner, it is important to ensure the complainant does not see any further or unnecessary negative impact on their business finances.

- ✓ **In order to ensure complainants are compensated in a timely manner, therefore, we agree that the Commissioner should have the power available to directly issue a monetary award where there is a finding that payments are due to the complainant that have been unfairly or unreasonably delayed by the respondent.**

Given what we know about the impact that late payments can and do have on the finances and viability of small businesses, and the personal finances of their owners, we also agree that any monetary award should reflect not just the monetary value of the late payment itself, but the impact that its delay has had on the complainant's business.

- ✓ **We therefore agree that the monetary award should be calculated to reflect this and put the complainant into the position that it would have been in had the full payment not been delayed.**

Question 5.2: To what extent do you agree that if the Commissioner considers that the respondent cannot pay the monetary award in the time specified, he or she may issue a binding payment plan?

Agree

Our research has shown how prolific late payments have become – 59% of people we surveyed as part of our research into the impact of the issue on callers to Business Debtline suspected that late payments were becoming a standard business practice for many businesses.¹³ With high numbers of companies engaging in this unfair payment practice, the issue can also be seen to have a domino effect on the supply chain, leading many small businesses who are subject to late payments to then also engage in the practice when dealing with other small firms.

That is why, in response to the Government’s recent short consultation on the Prompt Payment Code, we called for the Commissioner to also be given the power to act in cases where small businesses do not pay other small businesses on time, reinforced in our support for proposal one in this consultation.

However, given the impact that late payments can have on the finances of small businesses, it is reasonable to expect that some, if in receipt of a decision notice to pay a monetary award to a complainant, may not be able to afford the repayment in full within the time requested. This may also be the case with some larger businesses, if for example the investigation into payment practices finds multiple cases of late payments to multiple small businesses leading to a decision notice with a significantly high monetary award. However, it is our view that it will likely be more common for small businesses to find full payment of a monetary award unaffordable due to the more precarious nature of their finances.

- ✓ **We therefore strongly agree that there should be a mechanism by which small businesses are able to agree an affordable payment plan with the Commissioner.**
- ✓ **This option could also be extended to large businesses where the case is made for a clear need to spread payments over an agreed time scale. However, considering the disproportionate impact that late payments have on small businesses where finances are less adaptable, there should be a higher threshold or stricter set of criteria for large businesses seeking**

¹³ Money Advice Trust (November 2018) [Taking care of business: Eight key challenges facing small business owners](#)

payment plans under the claim of unaffordability of full repayment. In these instances, payment plans should be binding to ensure there are no further delays to small businesses receiving payment.

Question 5.3: To what extent do you agree that where the respondent fails to pay the monetary award, or fails to pay an instalment of a binding payment plan, the amount of the award or instalment should be recoverable as a debt (through court proceedings if necessary) by (i) the complainant themselves; (ii) the Commissioner, who would subsequently pass the amount recovered to the complainant; (iii) both the complainant and the Commissioner?

Agree

Once again we would highlight the need for different routes for small and large businesses. In cases where the respondent is a large business and the monetary award is not paid within the set time period, or where an instalment of a binding payment plan is missed, we agree that the monetary award should be recovered as a debt through court proceedings (if necessary). This power should only be used in cases where other avenues to secure payment have been exhausted. This is because court proceedings can take time and so efforts to secure payment more quickly through other routes is important in reducing any further unnecessary delay in repayment and negative impact on the complainant's business.

However, a different approach may be needed for small businesses required to pay a monetary award. A small business missing an instalment on their payment plan could be a sign of wider financial difficulty or cash flow issues, and pursuing this through the court system could only exacerbate these issues. Therefore, while the Small Business Commissioner may need this power to use against small businesses in some exceptional circumstances, it should always be a last resort. An alternative mechanism (outside of the court system) is likely to be more appropriate in instances of small businesses missing payments to other small businesses.

In terms of who can pursue the debt through court proceedings, we support the proposal for either the Commissioner or the complainant to be able to do so. As outlined in our response to question three, many small businesses are nervous of making a complaint against a larger supplier for fear of losing future business. In addition, many

small businesses may be unlikely to have the resources, time or capacity to pursue a court claim.

It is therefore important that, just as the Commissioner themselves should have the power to investigate where there is a suspicion that a business is engaging in unfair or poor payment practices, the Commissioner (as well as a complainant) should be able to recover a repayment in the form of debt, through court proceedings if necessary.

Question 5.4: To what extent do you agree that the Commissioner should have the power to impose a financial penalty when a business does not comply with a monetary award and / or payment plan?

Agree

As outlined in responses to previous questions, there is a worrying trend towards larger businesses using late payments as standard business practice, and this can have a significant impact on small businesses. We therefore believe it is vital that small businesses that are subject to late payments by suppliers are compensated in a timely manner to prevent any further negative impact on their business finances, as well as to act as a deterrent to poor practice.

It is therefore important that businesses found to be engaging in unfair or poor payment practices following an investigation by the Commissioner are incentivised to repay, either through a monetary award or binding payment plan, as soon as is feasibly possible within set and appropriate timescales.

However, as we have set out in our answers to previous questions, this needs to be proportionate to the size of the business and the reasons for late payment. For example, it would not be appropriate to impose a financial penalty on a small business who has been unable to comply due to other financial challenges – including due to other late payments.

- ✓ **We therefore agree that the Commissioner should have the power to impose a financial penalty when a larger business does not comply with a monetary award and/or payment plan. However, this must always be proportionate to the size of the business and the nature of the poor practice.**

Question 5.5: To what extent do you agree that in circumstances where there is a failure by a business to pay a financial penalty, the amount of the penalty should be recoverable by the Commissioner as a debt (through court proceedings if necessary)?

Agree

To ensure that the potential to be issued with a financial penalty functions as a deterrent for businesses failing to pay a monetary award or instalment of a binding payment plan, it is our view that the Commissioner should have the power to escalate the case through court proceedings if necessary, for the reasons outlined previously.

However, as stated previously, for smaller businesses mechanisms outside of the court system should be considered wherever possible.

- ✓ **We therefore agree that, in cases where there is failure by a business to pay a financial penalty within a reasonable set time period, and all other avenues have been exhausted, the Commissioner should be able to recover the penalty as a debt (through court proceedings if necessary).**

Question 6: To what extent do you agree that the power in proposal 6 should be made available to the Commissioner?

Agree

We understand that there may be circumstances in which an investigation into suspected poor or unfair payment practices by a business may take a lengthy period of time and come at a high financial cost to the office of the Small Business Commissioner. This might, for example, apply in cases where findings reveal systemic use of late payments as a standard business practice over a significant period of time. However, there may also be cases where the finding of unfair or poor payment practices is limited in scope, in which case it may not be proportionate to claim the full investigation costs from the business in question.

We therefore agree that in circumstances where the cost of investigation is high, the Commissioner should have the power made available in proposal 6 to recover the investigation costs incurred. However, if the costs of investigation fall below a certain threshold, the Commissioner could claim a flat fee for investigation costs that is both proportionate and fair in regards to the investigation findings.

As ever, any costs levied also need to be proportionate to the size of the business. There may also need to be a mechanism through which firms can request a review or raise a dispute over costs levied on them, to ensure these are fair and reasonable.

Question 6.1: To what extent do you agree that, where the respondent fails to pay investigation costs incurred by the Commissioner, those costs could be recovered by the Commissioner as a debt (through court proceedings if necessary)?

Agree

As highlighted in our response to the previous question, the costs to the Commissioner's office of investigating some cases may be high, and it is therefore important that the Commissioner has the power to claim these costs from the business in question where bad practice is uncovered. The requirement to pay the costs of investigation to the Commissioner may also serve as a further deterrent to businesses engaging in poor or unfair payment practices. However, we acknowledge that in some cases respondents may fail to pay these costs, and that the Commissioner will need another avenue for recouping the financial burden of investigation.

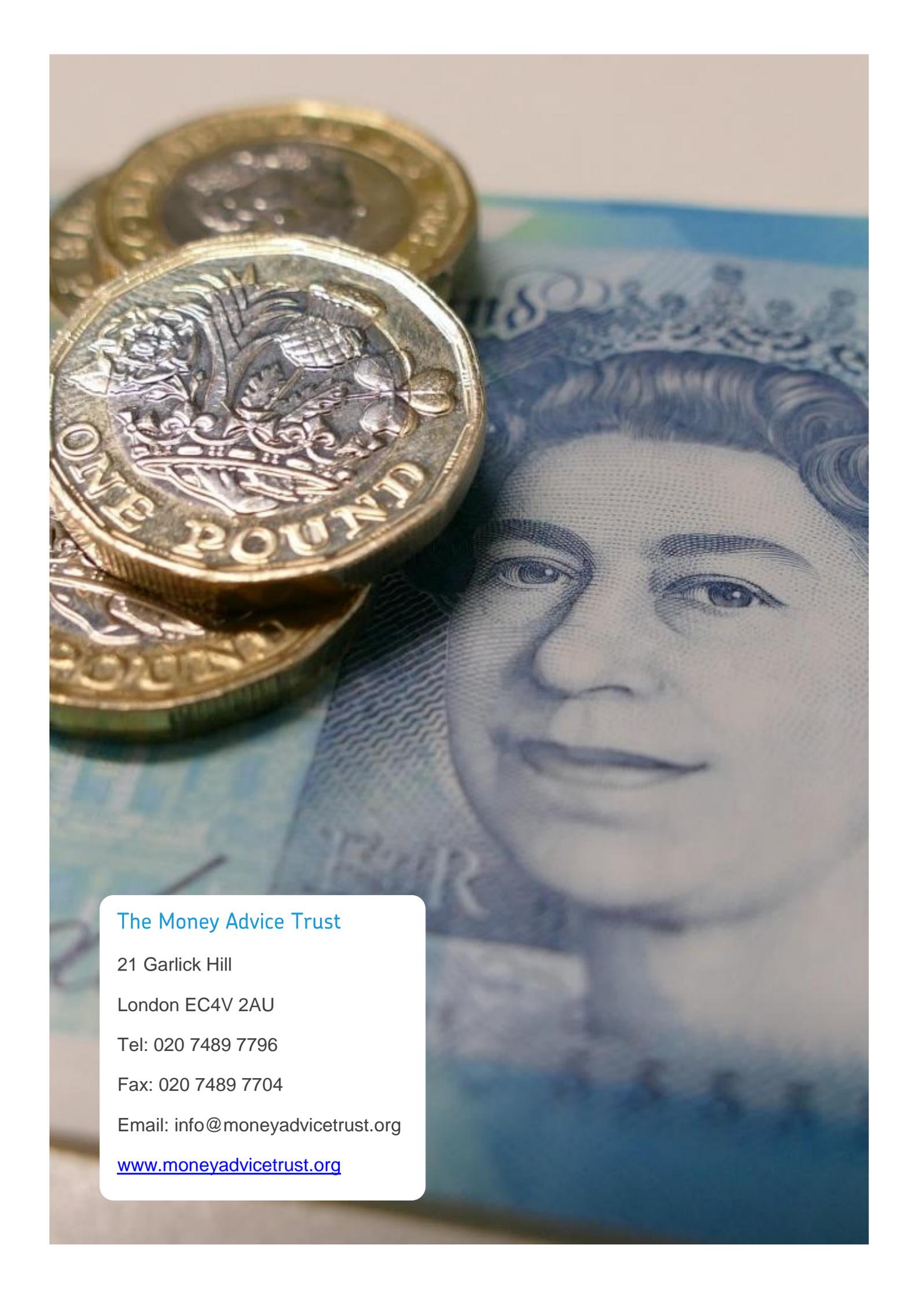
It is therefore our view that the Commissioner should be able to escalate the case and recover the investigation costs as a debt, through court proceedings if necessary.

However, this should only be undertaken when all other avenues have been exhausted and where businesses have been given a fair and reasonable time period in which to repay. As set out in our response to question 5.3, a different approach may be needed for small businesses required to pay costs, including pursuing these through a mechanism outside of court.

For more information on our response, please contact:

Harriet Dines, Senior Policy and Communications Officer, Money Advice Trust

harriet.dines@moneyadvicetrust.org



The Money Advice Trust

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org