



## **ACS Submission: A Small Business Commissioner**

### **Introduction**

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to the Department for Business, Innovation and Skills' discussion paper on a Small Business Commissioner. ACS represents 33,500 local shops across the country, the majority of which are classed as small businesses, including Spar UK, Nisa, One Stop and thousands of other independent retailers. On average, convenience stores employ seven members of staff per store<sup>1</sup>, so businesses operating up to around seven stores could fall within the definition of a small business and therefore be eligible to utilise the Small Business Commissioner as set out in this consultation.

Small, independent businesses who do not have a central administration function often find the procurement of services into their store a significant challenge, which is predominantly driven by unclear contractual information from suppliers. This often results in retailers not understanding the closing dates on contracts, additional charges and price increases.

Currently, there is limited awareness by retailers of the support already available to small businesses for these types of situations. ACS would support the introduction of a Small Business Commissioner to help highlight the support and advice available to retailers embarking on new relationships with suppliers/service providers.

ACS does not believe that the introduction of a Small Business Commissioner should be seen as a solution or replacement for other regulators, such as Ofgem. We would recommend that the Commissioner should therefore work in conjunction with independent regulators to ensure the interests of small businesses are taken into account by regulators.

Please see below for our response to the questions in this consultation.

### **Consultation Questions**

#### **Negotiating and Making Changes to Contracts**

- 1. What evidence do you have of unfair or unfavourable treatment of small businesses in contract negotiations during the last 2 years?**
- 2. What circumstances can make these practices unfair to small businesses?**
- 3. Have you ever tried to challenge proposed contract terms or arrangements, or refused to enter a contract including terms, that are unfavourable or you believe are unfair? If you have, under what circumstances and what was the outcome? If not, why not? Please provide specific examples (which may be anonymised) whenever possible.**

ACS is aware that retailers have faced problems with contracts for services or products for which they have a less comprehensive knowledge of, such as utilities. There are numerous examples where retailers with limited understanding of energy contracts have found

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<sup>1</sup> Association of Convenience Stores, Local Shop Report 2014

themselves paying costly backdated bills, or have unknowingly been rolled over onto higher tariff contract. As a result, we have worked extensively within the utilities market, to prevent these practices<sup>2</sup> happening, and, because of this work, the big six energy companies have committed to no longer using lengthy rollover contracts.

### **Payment Terms and Practices**

- 4. Do you have concerns about any of the practices in the table above? Are there circumstances in which the practices are particularly problematic for the day-to-day running of your business?**
- 5. Are there circumstances in which the practices listed in the table above are acceptable? Are there circumstances in which they can benefit suppliers? If so, how?**
- 6. Have you ever experienced any of the practices listed in the table above? If yes, which ones, when and how many times? Did they benefit or harm you?**
- 7. Are there other unfavourable or unfair payment practices which you have encountered? Please provide examples (these may be anonymised).**

The convenience sector has changed significantly over the past 10 years, with retailers placing a greater focus on their service provisions to meet customer demands. The ACS Local Shop Report 2014 shows that retailers are providing a significant number of new services to their customers, for example, 26% of stores offer parcel services, 51% offer bill payment services and 75% offer Lottery products. As a result, this means that retailers are engaging with many more service providers, which in some instances, has resulted in challenges for retailers.

Generally, small retailer's contracts with suppliers can often be exclusive and restrictive, preventing retailers from using other providers or changing their contracts. This can have a large effect on small businesses as it prevents them from moving to a new supplier and securing better contract terms.

ACS does not have any evidence to suggest this is a structural problem across our sector, but we are aware that smaller independent retailers that do not have central administration systems struggle to manage their contracts. ACS provides a legal helpline to members to support them with these contractual service issues. Recent concerns raised with us include: unilateral bank charge increases; contractual terms for the supply of cash machines and passing on business rates charges to retailers; disputes with changes to the commission rates earned by retailers for bill payment services; and waste providers rolling over contracts on to higher tariffs.

### **Breaches of Contract**

- 8. If you are a small business, or a representative organisation for small businesses, what could be done to encourage more businesses to claim interest and late payment charges where appropriate and create an environment in which this is considered the norm?**
- 9. How could the new Commissioner be helpful in resolving late payment disputes?**

N/A - usually our retailer members are unaffected by this issue due to being at the end of a supply chain.

### **Wider Business to Business Contractual Disputes**

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<sup>2</sup> [ACS Energy Market Review; Rollover Contracts](#)

- 10. Have you ever taken action to resolve disputes about these wider supply chain issues? If yes, under what circumstances and what was the outcome? If not, what deterred you? (Examples may be anonymised.)**
- 11. How could the new Commissioner be helpful in resolving those disputes?**

ACS believes that the role of a Small Business Commissioner should be limited to providing small businesses with information and advice about resolving disputes. The most likely course of action for a retailer who is involved in supply chain dispute would be litigation. To introduce mediation and additional attempts to resolve the dispute with a Small Business Commissioner could extend the dispute and delay the resolution via litigation.

We would recommend that a key role of the Small Business Commissioner would be to make legal support more accessible to small businesses and help them to determine the best course of action to resolve a dispute, such as litigation, where appropriate. Mediation should not be used as a replacement for litigation, but should work in tandem by making legal advice more accessible to small businesses with limited funds and knowledge of the processes.

### **A Small Business Commissioner**

- 12. Do you agree that the Commissioner should provide general information and advice to small businesses on a confidential basis, in relation to a dispute with businesses which are medium-sized or large?**

Yes. Currently ACS is able to provide regulatory advice to members through the ACS Assured Advice scheme. However, the law of primary authority does not currently cover advice for the resolution of supply chain disputes; therefore, our members are likely to benefit from confidential advice from the Small Business Commissioner on this issue.

- 13. If you are aware of other advice services for small businesses that assist with dispute resolution, have you used them? If yes, please describe your experience and whether it was positive or negative. If no, why did you decide not to use the advice service?**

N/A - ACS currently provides its members with access to a free legal helpline, which some retailers utilise to assist with dispute resolutions.

### **Voluntary Mediation**

- 14. Would you consider using a mediation service to support you in settling a dispute with another business?**
- 15. Are there any barriers that would prevent you from using a mediation service?**
- 16. Do you agree that the Small Business Commissioner should offer mediation (whether in-house or via a third party)?**  
**If yes, please say what specific gaps might it fill between other existing services or what specific added value might it offer?**

N/A - ACS does not have a strong view on voluntary mediation.

### **Encouraging Participation in Mediation**

- 17. Do you agree that the Small Business Commissioner should be able to adopt either or both of the measures set out above to encourage meaningful participation in mediation?**

**18. Are there any measures you think should not be used or others we have missed? Please explain your reasoning.**

N/A - ACS does not have a strong view on encouraging participation in mediation.

**For more information on this submission, please contact Edward Woodall at [Edward.Woodal@acs.org.uk](mailto:Edward.Woodal@acs.org.uk) or by calling 01252 515001.**