



TREATING SMALLER BUSINESSES LIKE CONSUMERS

UNFAIR CONTRACT TERMS

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On behalf of FSB, Verve surveyed 971 FSB members to understand their views on business contracts terms. The survey was in the field from 30 May to 5 June 2016. All findings are inclusive of a three year period, mid 2013- mid 2016.

KEY FINDINGS

- Over half (52%) of FSB members have been negatively impacted (suffered detriment) as a result of supplier contract terms over the period from mid-2013 to mid-2016.
- 2.8 million small firms are likely to have experienced negative financial consequences due to supplier contract terms. As a result, they faced additional costs of at least around £3.8bn. This equated to nearly £1.3bn a year on average.

POLICY RECOMMENDATIONS

FSB calls for the introduction of policy measures which cumulatively and over time, improve the 'contractual environment' for smaller businesses. This includes reducing the number of damaging contractual terms and consequently the levels of detriment.

- Require sectoral regulators to more explicitly and routinely focus on small business vulnerabilities. This would include the implementation of measures which improve the protection of smaller business users of financial services, energy and telecoms services.
- Widen the remit for the Competition and Markets Authority (CMA) so that it has a routine focus on micro-businesses in addition to consumers.
- Require Local Authority Trading Standards Services (LATSS) to have more of a focus on protecting smaller businesses from detrimental contract terms. This should also include requisite public enforcement powers to take action in cases of unfair contract terms in business-to-micro-business contracts (B2Mb).
- Improve the availability of and accessibility to education and information about good contracting practices for small businesses.
- Help build a clear and comprehensive picture of the small business redress landscape in order to understand the constraints small businesses face in trying to obtain redress and subsequent measures for reducing such barriers.

THE SCALE OF THE PROBLEM

- 52 per cent of FSB members reported that their business suffered negatively as a result of supplier contract terms at least once.
- 31 per cent reported suffering twice.
- Nearly one in five (19%) suffered negatively four times or more.
- Nine per cent suffered more than five times.

Table one: Number of times small business were negatively affected/ impacted

Source: FSB terms of contracts survey 2016

Number of times business suffered detriment	Percentage reporting incidents
Once	26%
Twice	31%
Three	24%
Four	8%
Five	3%
More than five	9%

CONTRACT TERMS

- Nearly a quarter (24%) of FSB members identified automatic rollover clauses as contractual terms that had resulted in negative consequences for their business. .
- Over a fifth (22%) suffered negative consequences as a result of lengthy notice periods to end the contract.
- A fifth (20%) also reported having suffered negative consequences because of damaging terms hidden in the 'small print' i.e terms were not prominent in the contract.
- A similar proportion (20%) reported being negatively impacted by high early termination charges.

Table two: Detrimental contract terms impact on small businesses¹

Source: FSB terms of contracts survey 2016

Detrimental contract term	Percentage reporting it as an issue for their business
Automatic renewal (rollover) clauses not made clear upfront	24%
Notice period required to end/ cancel a contract	22%
High early termination charges	20%
Detrimental terms that were not prominent i.e. in the small print	20%
Variations to agreed price not made clear upfront	14%
Leeway to change the terms at supplier's discretion	14%
Terms which excluded liability by the provider of the good or service if the supplier failed to deliver a good or service of adequate quality	11%
Insufficient notice of terms or time to consider them	11%
Fixed term notice period not made clear upfront	10%
Broad cancellation rights for the supplier/provider that were not reciprocated	7%
Other	4%

¹ Respondents were able to select as many of the options listed as was relevant to their experience.

THE COST OF THE PROBLEM

- 37 per cent of members said the contract issue, which had the biggest negative effect, cost their business over £1000.
- 22 per cent said it cost their business £2000 or more.
- More than one in ten (11%) said it cost more than £5000.
- UK's small business community could have suffered at least £3.8bn in detriment due to supplier contract terms.² This equates to just under £1.3bn on average per annum. This is a considerable additional cost of doing business every year and consequently a drag on the small business community and the resources available to invest and grow.³

Table three: Cost to the business of the contract term
Source: FSB terms of contracts survey 2016

Amount of detriment	Percentage reporting the cost
£1 - £999	55%
£1000 - £1999	15%
£2000 - £2999	7%
£3000 - £4999	4%
£5000 and over	11%
Not sure	8%

SOURCE OF THE PROBLEM

- 42 per cent of FSB members reported that the most detrimental contract terms were to be found in the utility sectors (energy and communications) and financial services, all essential services for small businesses.
- The remaining 58 per cent were spread over a wide range of markets. Table four below sets out the distribution of the most damaging supplier contract terms outside the non-utility and financial sector.

² The figure of £3.8bn was identified by using the estimate of the number of small and medium-sized businesses across the economy who are likely to have suffered negatively due to supplier contract terms (see page 9) and multiplying that figure by each of the different percentages reported by respondents regarding the quantity of detriment of the instance of supplier contract terms that had the most negative impact on their business i.e. Table 3. This established an estimate of the number of small and medium-sized businesses that suffered detriment in each cost range presented in the survey. These numbers were then multiplied by the mid-point value in the different cost ranges to establish an estimate of the total quantum to small and medium-sized businesses in each cost range. Finally, these amounts were summed to give an estimate of the total detriment across the three years for the worst instances of detrimental supplier contract terms across the UK's small and medium-sized business community.

³ This figure is likely to be an underestimate as it uses as the basis for its calculation responses to a question about the cost of the worst example of contract terms having negative consequences for the respondents businesses.a

Table four: Sectors with detrimental supplier contract terms**Source: FSB terms of contracts survey 2016**

Sector	Percentage reporting the sector
Information and communications technology goods and services	11%
Merchant services	9%
Marketing services (including advertising)	6%
Professional and business services/ consultancy	4%
Property/ premises (including leases and maintenance and other services)	2%
Delivery services (including couriers, postal etc)	1%
Waste management	1%

- The most widely reported detrimental contract term for the non-utility and the financial sector is information and communications technology (ICT).
- This was closely followed by merchant services, with marketing services being the third most cited.

Other sectors reported by respondents as the source of detrimental contract terms included: hygiene and food services, repair services, storage, security services, building services, HR services and temporary staff suppliers.

BENEFITS OF REDUCING INSTANCES OF DETRIMENTAL CONTRACT TERMS

A reformed framework for B2Mb markets would deliver three categories of benefits

1. A positive impact on the cost of doing business, as there would be more resources at the disposal of micro-businesses for investment, expansion and recruitment.
2. The knock-on effect of enabling micro-businesses to more effectively compete in their own sector or enter new sectors to challenge incumbents. In turn, this would result in more efficiency in these markets as micro-businesses:
 - Drive their competitors to be more efficient or put those competitors out of business because of their inability to become more efficient.
 - Introduce innovations or incentivise incumbents to innovate to stay ahead.
3. Cumulative economy-wide benefits from the static and dynamic gains for micro-businesses and markets, that would result in improvements in productivity and increases in GDP-per-capita.

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