

# 19 Compliance with Prompt Payment Legislation in the Health Sector

**19.1** The Health Service Executive (HSE) and entities funded by it make significant payments to suppliers of goods and services. In 2014, the HSE incurred total expenditure of just under €13.6 billion. An estimated €4 billion (29%) of this expenditure relates to the procurement of goods and services.<sup>1</sup> The HSE provides funding to some 2,300 agencies, which also procure substantial quantities of goods and services.

## Prompt Payment Legislation

**19.2** General legislation has been designed to ensure that suppliers are paid promptly and that where delays in payment occur, the supplier is appropriately compensated.

**19.3** Legislation providing for automatic penalties in relation to late payment to suppliers was first enacted in 1997.<sup>2</sup> The legislation has been amended a number of times since then.

- The initial legislation (commenced in January 1998) provided for the automatic payment of interest by public sector entities where suppliers had not been paid within 45 days of receipt of the relevant invoice.
- In 2002, the legislation was amended to apply to both public and private sector purchasers and late payments were now defined as those not made within 30 days of receipt of the relevant invoice.<sup>3</sup> In the interest of efficiency, interest payments of less than €5 (per invoice) did not have to be paid.
- The prompt payment legislation was further amended with effect from March 2013. This provided for the payment of compensation ranging from €40 to €100, depending on the value of the invoice (see Figure 19.1), in addition to interest, where payment was not made within 30 days of receipt of the relevant invoice or in line with the contract credit terms.<sup>4</sup> The €5 minimum payment threshold was also removed. The interest rate chargeable is the European Central Bank main refinancing rate plus eight percentage points.

**Figure 19.1 Amount of late payment compensation payable<sup>a</sup>**

Transaction value	Compensation payable
	€
Not exceeding €1,000	40
Exceeding €1,000 but not exceeding €10,000	70
Exceeding €10,000	100

Source: European Communities (Late Payment in Commercial Transactions) Regulations 2012 (SI No. 580 of 2012).

Note: a Compensation is payable in addition to interest due.

1 This includes payments made to suppliers, drugs paid for under the Primary Care Reimbursement Service and payments made to private nursing homes under the Nursing Home Support Scheme.

2 Prompt Payment of Accounts Act 1997

3 European Communities (Late Payment in Commercial Transactions) Regulations 2002 (SI No. 388/2002)

4 European Communities (Late Payment in Commercial Transactions) Regulations 2012 (SI No. 580/2012)

- 19.4** In addition to the legislation, under guidelines introduced in 2009 following a Government decision, all central Government departments were required to pay their business suppliers within 15 days of receipt of a valid invoice. This requirement was extended in 2011 to include the HSE, local authorities, state agencies, and all other public sector bodies, except commercial semi-state bodies. The statutory compensation and interest payments are not affected by these guidelines.
- 19.5** This report examines compliance with prompt payment legislation in the HSE and in two entities funded by the HSE whose financial statements are subject to audit by the Comptroller and Auditor General. These were Beaumont Hospital and St James's Hospital.

### **HSE National Financial Regulations**

- 19.6** The HSE's National Financial Regulations are intended to outline the high level framework within which the internal financial control system of the HSE operates. The regulations are prepared in order to ensure that the financial controls in operation within the HSE are consistent with Irish and EU statutory requirements.
- 19.7** The relevant regulation in relation to prompt payment of suppliers is reproduced in Figure 19.2. The HSE's regulations do not set out the required controls to ensure that interest and compensation due to suppliers is actually paid.

#### **Figure 19.2 HSE National Financial Regulation in relation to prompt payment of interest**

Budget holders must ensure that in designing, implementing and monitoring their purchasing arrangements, they are fully aware of and compliant with the requirements of the prompt payment legislation.

- The key prompt payment issue (relating to the purchasing process) is to ensure that there is clarity as to what payment terms apply in respect of any purchase order or contract issued to any supplier.
- The HSE standard payment terms in respect of normal suppliers or what are often referred to as 'Traders' are within a range of 30 to 45 days from receipt of invoice or delivery of goods/services, whichever is the later.
- The payment terms should be quoted on all documentation issued to suppliers including tender documentation, purchase orders, etc.

There will be cases where payment terms requiring less than 30 days are appropriate however, these require the specific or general approval of the relevant Assistant National Director of Finance unless encompassed within the following:

- public utilities (e.g. Eircom, Bord Gáis, etc.)
- grants to outside agencies – no invoice, paid in accordance with contract or agreement.

---

Source: HSE National Financial Regulations

## Prompt Payments in the Health Service Executive

- 19.8** The annual financial statements of the HSE indicate that prompt payment interest paid to suppliers was in the range €200,000 to €336,000 each year from 2010 to 2014. No prompt payment interest was paid in respect of nursing home payments or drug supplies.
- 19.9** The audit of the financial statements of the HSE for the 2013 and 2014 years of account examined compliance with the revised prompt payment legislation in a number of HSE locations. The audit examined whether compensation was paid, as required and the payment terms used to calculate interest and compensation.
- 19.10** None of the locations examined were found to be paying compensation in relation to late payments. The audit noted that there was variation between locations with some operating a standard credit period of 30 days and some operating a 45 day credit period with suppliers.

### ***Non-payment of Compensation***

- 19.11** The 2012 Prompt Payment Regulations provided for the payment of compensation as follows

*It shall be an implied term of every commercial transaction that, where statutory late payment interest becomes payable under Regulation 4, the supplier shall be entitled, without the necessity of a reminder, in addition to the statutory late payment interest, to the amount specified in the Schedule as compensation towards the relevant recovery costs incurred by the supplier as a consequence of late payment.<sup>1</sup>*

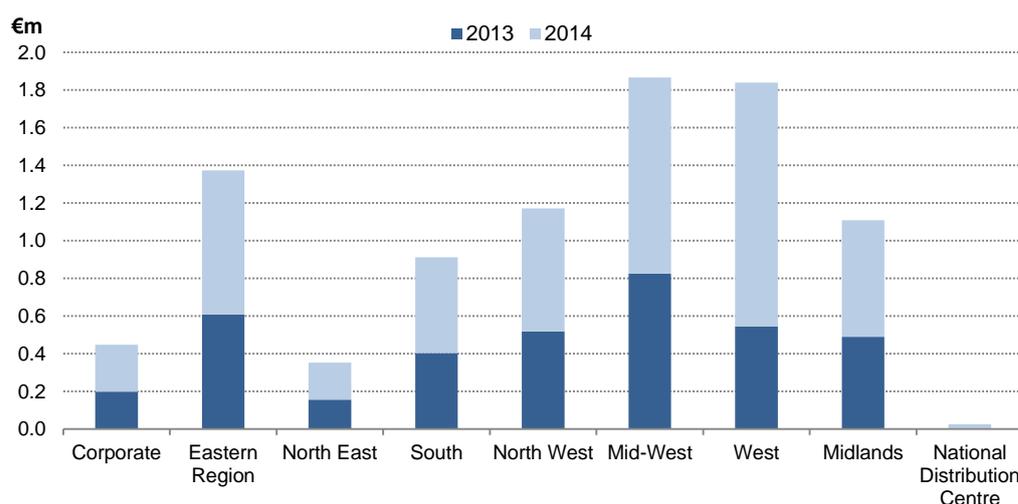
- 19.12** In February 2013, the Department of Jobs, Enterprise and Innovation received legal advice from the Attorney General in relation to the implications of the planned changes to the prompt payment legislation. The Attorney General's Office advised the Department that once late payment interest is payable under the regulations, then compensation costs are automatically also payable, without the necessity of a reminder.
- 19.13** Legal advice obtained by the HSE in February 2015 noted that there was no obligation on a purchaser to pay compensation amounts under the regulations as a matter of default. The reasons given for this were
- The 2012 Regulations imply two terms into commercial contracts – an entitlement to late payment interest where the purchaser is late in paying the amounts owed and an entitlement to compensation towards recovery costs incurred by the supplier as a result of late payment.
  - In interpreting the term 'entitlement' and whether there is any corresponding obligation on the supplier to take any steps to exercise the entitlement, the fact that the regulations provide for compensation for 'recovery costs' could arguably be relied upon as an indication that the regulations envisage the supplier taking steps to assert an entitlement as a result of late payment.
  - The EU Directive<sup>2</sup> states that member states shall ensure that where late payment interest is payable, the supplier is entitled to obtain from the purchaser a fixed sum of compensation. The use of the word 'obtain' would suggest that the supplier must take steps to obtain the amount owed as an entitlement.

<sup>1</sup> Regulation 4 states that "it shall be an implied term of every commercial transaction that where the purchaser does not pay for goods or services by the relevant payment date, the supplier shall be entitled to interest without the necessity of a reminder".

<sup>2</sup> EU Directive 2011/7/EC

- 19.14** However, the HSE's legal advisors stated that while they believed that their position on the compensation payments was a reasonable interpretation of the regulations, that the Attorney General's view could not be disregarded by the HSE.
- 19.15** Following discussions with the audit team on the audit findings, the HSE concluded in April 2015 that while it had legal advice supporting its past actions, a review of the matter resulted in a decision to recognise a liability to pay compensation to suppliers that had received late payments since the introduction of the new requirements in March 2013.
- 19.16** The financial statements for the 2014 year of account include a liability of €9 million for compensation payments. At September 2015, these compensation amounts had not been paid to suppliers.
- 19.17** This amount represents amounts due since the commencement of the 2012 Regulations in March 2013 (see Figure 19.3 for a breakdown by region). The liability was calculated in line with the credit terms in place in the individual regions.<sup>1</sup>

**Figure 19.3 Breakdown of compensation liability by HSE area, 2013 and 2014**



Source: Health Service Executive

### ***Agreement of Credit Terms***

- 19.18** The legislation defines the payment date in relation to a commercial transaction as
- the date, or end of the period, for payment specified in the contract, or
  - where the contract does not specify the date or period for payment, the date falling 30 calendar days after the date of receipt by the purchaser of the invoice.
- 19.19** The EU Directive underlying the 2012 Regulations allowed member states to grant a certain amount of flexibility to public entities providing healthcare and allowed for member states, under certain conditions, to extend the statutory period of 30 days for payment of invoices to a maximum of 60 days. However, this option was not included in the Regulations which gave effect to the EU Directive in Ireland.

<sup>1</sup> This is based on the HSE's policy of calculating interest after 45 days in some HSE areas and 30 days in other HSE areas.

- 19.20** In relation to the HSE areas applying credit terms of 45 days, the HSE noted that while it did not have a formal contract agreement providing for this, the HSE's purchase orders specify that the purchase order terms and conditions form a contract and supersede any previous oral or written negotiations and agreements with suppliers.<sup>1</sup>
- 19.21** Legal advice obtained by the audit indicates that the prompt payment legislation permits a purchase order specifying payment terms of 45 days (or another date) to constitute a contract, with the calculation of prompt payment interest and compensation on payments made after the specified period. In such cases, unless the supplier notifies the purchaser of their objection to the specified payment terms, these payment terms may be deemed to be accepted by the supplier.

### Views of the Accounting Officer

- 19.22** The HSE noted that with regard to the legislation, the key challenges that the HSE faces are the impact on cash flow and the administrative difficulty in meeting the invoice processing deadlines. The HSE processes almost two million invoice payments annually to over 20,000 suppliers through eight major payment centres using multiple financial payment systems. A number of HSE areas have single systems and locations for the processing of invoices and do not incur any prompt payment interest.
- 19.23** Analysis conducted by the HSE in two HSE areas found that late payments arise in relation to a small number of locations that are not processing invoices in line with the legislation and in relation to complex invoices.
- 19.24** The HSE has taken a number of steps to address the issue.
- The 2015 work programme of the National Financial Controls Assurance Group involves identifying the value and service location of invoices that attract prompt payment interest. This work will inform further action to reduce such numbers. A pilot invoice capture project is commencing in the Eastern region in this regard.
  - The HSE noted that work is ongoing to implement a single national financial and procurement system. The implementation of such a system will assist the HSE in ensuring compliance with prompt payment legislation.

### Examination of Voluntary Hospitals

- 19.25** In 2014, St James's Hospital and Beaumont Hospital incurred expenditure of around €422.3 million and €338.7 million respectively. About 31%<sup>2</sup> of the total expenditure in St James's Hospital and 33% of the total expenditure in Beaumont Hospital relates to direct procurement of goods and services. The audits of the financial statements of St James's Hospital and Beaumont Hospital for the 2014 year of account examined compliance with prompt payment legislation.

<sup>1</sup> Payment terms are specified in contracts covering nursing home payments and supply of drugs.

<sup>2</sup> Excludes €35.8 million expenditure in relation to the national budget for Clotting Factor Concentrates.

***St James's Hospital***

- 19.26** The audit examined a sample of 45 invoices in St James's Hospital with a total value of €6.9 million. In 13 cases with a total value of €1.7 million, invoices were not paid within 30 days of receipt. It was estimated that in those cases, interest of €5,125 and compensation of €1,180 were due to suppliers.
- 19.27** The audit identified that late payment interest due on invoices not paid within 30 days of the invoice receipt had not been calculated or paid to the supplier since the commencement of the 2012 Regulations and compensation amounts due on late invoices were not calculated or paid to the supplier.
- 19.28** The St James's Hospital financial statements for the 2014 year of account include an estimated charge of €389,000 to recognise the expected cost of late payment interest and compensation due to suppliers since the introduction of the legislation in March 2013.

***Beaumont Hospital***

- 19.29** The audit examined a sample of 47 invoices in Beaumont Hospital with a total value of €2.2 million. In 25 cases with a total value of €710,000, the invoice was not paid within 30 days of receipt, and in one case with a value of €262,000, the invoice was not paid within the period (45 days) as set out in the invoice. It was estimated that in those cases, interest of €5,569 and compensation of €2,300 were due to suppliers.
- 19.30** The audit noted that late payment interest due on invoices not paid within 30 days of the invoice receipt had not been calculated or paid to the supplier since the introduction of the 2012 legislation. Beaumont Hospital had instead agreed informal arrangements with suppliers. For the sample reviewed, payments were made in varying timeframes ranging from less than 30 days up to 126 days. In addition, compensation amounts due on late invoices were not calculated or paid to the supplier.
- 19.31** Beaumont Hospital's 2014 statement of internal financial control discloses that the hospital's Board is aware of the legislation and recognises that action needs to be taken to ensure that it complies with the legislation. It notes that the hospital has not paid interest or compensation to suppliers and has opted to negotiate extended payment terms with suppliers instead. The Board estimated that approximately €200,000 in interest and compensation is payable to suppliers since March 2013. These amounts have not been recognised in the financial statements for the 2014 year of account.

**HSE Oversight of Voluntary Hospitals**

- 19.32** The HSE has service arrangements in place with St James's Hospital and Beaumont Hospital. While the service arrangements do not specifically mention a requirement to comply with prompt payment legislation, they do require service providers to comply with all applicable laws, regulations, procedures and requirements of any relevant governmental bodies. Service providers are required to issue an annual statement of compliance to the HSE on the requirements set out in the service arrangement. In 2014, both hospitals declared that they had appropriate systems of internal controls in place to allow compliance with all applicable laws and regulations as required under the service arrangement with the HSE.
- 19.33** St James's Hospital and Beaumont Hospital noted that there is a need to implement a robust monitoring mechanism for changes to legislation.

## Conclusions and Recommendations

- 19.34** There is variation in the credit terms in operation in the HSE. Some HSE areas use a standard credit period of 30 days and a number of areas operate a 45 day credit period with suppliers. Separate payment terms are in place under contracts for payments to nursing homes and drug suppliers. As a result, suppliers may not be treated equally.
- 19.35** The HSE and two of the largest voluntary hospitals did not comply in a timely manner with legislative changes in respect of prompt payments.

### Recommendation 19.1

The HSE should monitor legislation to identify changes that have implications for its operations, and those of bodies it funds. Notification and guidelines should be disseminated in a timely manner to ensure consistency across the health system, and compliance by health agencies with their legal obligations.

#### Accounting Officer's response

Agreed. The HSE will continue to engage with the Department of Health in respect of prospective legislation that has potential impacts for the health services.

- 19.36** The HSE did not apply all of the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

### Recommendation 19.2

The HSE should put procedures in place to ensure that compensation is paid to suppliers in line with the 2012 prompt payment regulations.

#### Accounting Officer's response

Agreed. Where the HSE has single financial systems with standard processes in place, such as the Primary Care Reimbursement Service and in relation to the Nursing Home Support Scheme, these procedures can be put in place in the short-term. The timescale in respect of the remainder of the HSE's services is dependent on a number of factors including progress on a new financial and procurement system. The HSE will continue to engage with the Department of Health in relation to this.

### Recommendation 19.3

St James's Hospital should ensure that all interest and compensation amounts due under the revised regulations are calculated and paid over to suppliers.

#### Chief Executive Officer's response

Agreed. St James's Hospital is now compliant with the legislation since it was brought to the hospital's attention during the 2014 audit. The hospital has focused on a number of key areas in order to address the issue.

A financial system update that will allow the compensation amounts to be calculated automatically is due to go live in the third quarter of 2015.

The hospital's compliance unit has undertaken an internal review of the controls and processes surrounding the management of invoices. A number of draft recommendations have been made following the review including a revised process for dealing with invoices which are queried/disputed by the hospital.

#### **Recommendation 19.4**

Beaumont Hospital should ensure that all interest and compensation amounts due under the revised regulations are calculated and paid over to suppliers.

#### **Chief Executive Officer's response**

Agreed. Beaumont Hospital has been working to become compliant with the legislation since the issue was brought to the hospital's attention during the 2014 audit. Compliance with the legislation is challenging due to the size and complexity of a hospital that processes around 60,000 invoices per year.

The hospital is liaising with the supplier of its financial system to ensure that an appropriate system is introduced to enable future compliance with the legislation. It is expected that testing on system changes will be completed in the third quarter of 2015.