RESPONSE TO THE DIRECTOR OF LABOUR MARKET ENFORCEMENT'S CONSULTATION ON TACKLING EXPLOITATION IN THE LABOUR MARKET

The CBI supports the creation of a Director to provide overall strategic direction for labour market enforcement and promote joint working between agencies. The CBI welcomes Sir David Metcalf's introductory report and is pleased to respond to this consultation on setting the UK's strategy to tackle labour exploitation. The CBI speaks for 190,000 businesses, employing 7 million people, which represents about one third of the private-sector workforce. This response sets out the CBI's view that effective enforcement is fundamental to meaningfully protecting employment rights in a well-functioning labour market and is improved by using intelligence to assess risk and target proactive investigations on employers most at risk of non-compliance.

A well-functioning labour market requires employment rights to be protected through effective enforcement

The UK's strong framework of employment rights can only meaningfully protect individuals where it is effectively enforced. Effective enforcement mechanisms underpin a well-functioning labour market by upholding employment rights and protecting compliant businesses from operating on an uneven playing field. The vast majority of employers take their obligations towards staff very seriously and, as a result, most people in the UK do not have to pursue enforcement action. Even so, it is imperative that robust routes to enforcement are in place where employers do not meet their obligations to staff.

Should an employment dispute arise, it is preferable for the employer and individual to reach a fair and equitable resolution by agreement when possible. The CBI has long called for reform of the employment tribunal system to return them to their original vision of an easily accessible, informal, speedy and inexpensive system for people to individually enforce their rights where this is not possible.[1]

Requisite for this is reform of the 2013 employment tribunal fees system. As found by the Supreme Court ruling, the CBI has consistently argued that the fees system was flawed because it set fees at too high a rate and acted as a barrier to justice for some individuals. While there continues to be a role for a proportionate fee that acts as an incentive to ensure that going to tribunal is always a last resort, it does not require the high fees introduced in 2013. Instead the CBI believes that introducing a more progressive system of fees and remissions would improve the enforcement of employment rights via the tribunal system.[2] This would be achieved by:

- Tackling the misperception that lower earners could be asked to pay extremely high fees by presenting the £1,200 headline rate as a cap on the possible fee due, rather than as the fee subject to remissions.
- Reducing the contribution rate under the help with fees scheme and raising the threshold above which the contribution rate comes into effect to the level of the National Living Wage (NLW).
- Introducing a minimum £5 fee payable by all claimants to ensure that there is always an incentive to resolve disputes by agreement and without recourse to tribunal.

[1] The CBI first recommended tribunal reform in its report The Right Balance: Delivering Effective Employment Tribunals, 2011 and subsequently in CBI-TUC, Response to the Ministry of Justice's and Department for Business, Energy and Industrial Strategy's Review of Reforming the Employment Tribunal System, 2017

[2] CBI, Response to the Ministry of Justice's Review of the Introduction of Fees in the Employment Tribunals, January 2017

Individually enforcing employment rights through the tribunal system may not be possible for a small proportion of people that either do not know their rights, how to access a tribunal or are in a coercive labour relationship. It is therefore vital that routes to enforcement via statutory bodies are accessible and efficient. The business community believes that statutory enforcement contributes to a well-functioning labour market and that this is most effective where agencies bring the full force of enforcement tools to bear on businesses that are non-compliant while minimising compliance burdens placed on the majority of complaint businesses.

With this view in mind, the CBI has identified six areas in which the Director's strategy can improve labour market enforcement. These are:

- Increasing people's awareness of their employment status and associated rights to help prevent labour exploitation
- Targeting proactive investigations on the basis of risk and intelligence to minimise burdens on compliant employers
- Driving up standards in supply chains by promoting good governance
- Improving clarity around people's pay entitlements to help minimise unintentional NMW/NLW breaches
- Applying the GLAA's new, tougher powers, rather than extending licensing, to improve enforcement
- Balancing the need for flexibility and fairness in the enforcement of the rights of agency workers

Increasing people's awareness of their employment status and associated rights will help to prevent labour exploitation

Matthew Taylor's review of modern working practices has raised a number of questions about how people's employment rights relate to the UK's framework of employment status. The review suggests that the framework for employment status is difficult to understand and leads people to be unaware of their employment rights, particularly when engaged in new forms of work. The CBI believes that swiftly bringing forward greater clarity around the UK's framework of employment status is vital to increase people's access to rights – how this is best achieved, rather than its necessity, is the central question.

New forms of work will always pose challenges at the boundaries of employment law. While this is inevitable, it is vital that the framework of employment status quickly responds to these situations. The UK's framework of employment status has proven to be a predictable test of established working practices that can respond to new forms of work. Indeed, it can probably do so quicker than would be possible through changes to primary legislation. While the law is effective, there is scope for improving how it is communicated and enforced. The CBI believes that the Director of Labour Market Enforcement has a role to play in both increasing people's understanding of their employment rights as it relates to employment status and people's understanding of the routes available to best enforce their rights.

The CBI welcomes the creation of the Intelligence Hub as a shared resource to increase individuals' and employers' knowledge of employment rights and enforcement mechanisms. Improving the online presence of the enforcement agencies through the Intelligence Hub, especially the Employment Agencies Standards (EAS) Inspectorate, should be a priority in order to make guidance on employment standards and avenues to report problems more accessible. A portal system where individuals and employers are directed to the correct agency and affiliated bodies through one site, and improving the agencies' Search Engine Optimisation will help to make the Intelligence Hub individuals' and employers' first port of call.

Increasing people's access to information on employment status and guidance about what this means in practice for different types of work is important to help prevent labour exploitation. Creating and refreshing such a resource should be part of the enforcement agencies' proactive work and making it available through the Intelligence Hub and affiliated bodies will help to increase its accessibility. The CBI believes that this

should be part of further actions taken by the government to increase people's understanding of their employment status.[3] This would be achieved by:

- Extending the right to a written statement outlining terms of employment to all workers so that any individual engaged in an employment relationship should have a record of their rights and their employers' obligations.
- Introducing an online test that indicates an individual's likely employment status, enabling people to better understand their employment status as it relates to their rights. While not legally binding, this will boost an individual's confidence to query status in the workplace or at tribunal.
- Introducing a fee-free status only track in employment tribunals for people to quickly determine their employment status to increase people's access to a clear, efficient and definitive channel to determine their employment rights.

Recommendations

- Raise the online presence of enforcement agencies through the Intelligence Hub to improve the accessibility of guidance on employment status, rights, labour standards and routes to report problems.
- Recommend that greater clarity about the UK's framework of employment status is brought forward in guidance and that an online test that indicates people's likely employment status is introduced to increase people understanding of their rights.
- Recommend the introduction of a fee-free status only track in employment tribunals for people to quickly determine their employment status and associated rights.

Targeting proactive investigations on the basis of risk and intelligence minimises burden on the compliant

There are a number of tools in the enforcement tool box, with different approaches seeing effectiveness in different sectors and particularly where introduced with industry support. Choosing the right enforcement tool should be determined by the level of risk, nature of non-compliance and structure of supply chains, whether domestic or international, in particular sections of the labour market.

Taking an intelligence-led approach to identify risk underlies effective enforcement. The level of risk is determined by a number of factors and the CBI supports the use of trend data and a structured methodology to consistently identify risk across agencies. Using risk models to proactively target the enforcement agencies' powers on employers most at risk of non-compliance is supported by the business community as it minimises burdens on the compliant majority. Applying a risk-based and intelligence-led methodology is a proportionate approach to inform how the enforcement agencies' resources are targeted and will lead to the best enforcement outcomes with finite resource.

Recommendation

- Take a risk-based approach to proactively target enforcement on employers most at risk of non-compliance to minimise the burdens placed on the compliant majority.

[3] CBI, Work that Works for All – Response to Matthew Taylor's Review, May 2017

Action to drive up standards in supply chains should promote good governance and not limit business' ability to do business

The UN Guiding Principles on Business and Human Rights is an established framework that sets out what the business community understands its responsibilities to be when engaging people as part of their operations. It requires all businesses to *respect* human rights and informs the actions businesses take to 'avoid infringing on the human rights of others and…address adverse human rights impacts with which they are involved'.[4]

The UN Guiding Principles distinguish between states' duties to protect individuals against human rights abuses in their jurisdiction (including by businesses) and businesses' responsibility to *respect* human rights in their operations and supply chains. The requirement to respect human rights applies to all businesses, irrespective of size, sector, structure or location. Businesses understand that their responsibility to respect human rights is not automatically met with compliance with national laws where states fail in their duty to protect citizens, and requires due diligence to be embedded across their organisation and supply chains. This enables businesses to identify risk in order to avoid human rights abuses and take steps to address them where they have occurred in their operation without taking on states' duties to protect human rights – a role that businesses would not be able to fulfil throughout their supply chain.

The UN Guiding Principles have informed businesses' good practice in tackling labour exploitation. The UK's Modern Slavery Act (MSA) has built upon these responsibilities and catalysed the promotion of good practice, helping to continue driving up labour standards throughout the global supply chains of UK companies. By requiring employers to undertake due diligence and promote good governance in their supply chains it is changing the behaviours that drive client-supplier relationships. Developing good governance behaviours is central to tackling labour exploitation.

The MSA has focused businesses' attention on the issue and made what was often part of corporate social responsibility a board-level priority. The proportion of UK supply chain managers who have mapped their suppliers to understand the risk of modern slavery has increased by 36% as a result of the MSA and the number who now say that they would know what do if they found modern slavery in their supply chains has increased four-fold.[5] With an estimated 12,000 UK and 6,000 non-UK firms in scope, part of the MSA's effectiveness is promoting good governance in UK and international supply chains. This is contributing to positive development outcomes among firms engaging their suppliers in best practice through their trading relationships. For example, under the Ethical Trading Initiative, global retailers are trialling a social dialogue programme to enable workers to better access their rights in Turkey as part of action to protect Syrian refugees working in the garment industry. Retailers plan for a similar programme to be introduced in Bangladesh.[6]

The UK's network of established, emerging and start-up firms helps to share good practice in due diligence and governance across the business community. Relationships between larger clients and medium- and smaller-sized suppliers are a product of the UK's economic base in which 99% of private sector businesses are SMEs.[7] This model drives innovation and productivity across the business community, boosts investment in SMEs and improves the quality delivered to customers. It also increases the number of tiers in UK supply chains. The CBI does not believe that there is an enforcement challenge that warrants the Director's extreme proposal to limit the number of tiers in UK supply chains. Doing so would lead top-tier businesses to bring

[4] UN, Guiding Principles on Business and Human Rights, 2011
[5] The Chartered Institute of Procurement & Supply (CIPS) surveyed members the year the MSA was introduced (between 07/12/15 and 21/12/15) and two years after (between 03/08/17 and 16/08/17). It found that the proportion of UK supply chains managers who have mapped their suppliers to understand the potential risks and exposure to modern slavery increased from 33% to 45% and that the proportion who said they would not know what to do if they found modern slavery in their supply chains fell from 52% to 17%. CIPS press release published 6 September 2017.
[6] Marks & Spencer, Human Rights Report 2017, p.15
[7] FSB, Small Business Statistics, 2016

production in-house at a higher cost and result in capital flows to SMEs drying up, fundamentally threatening the UK's business ecosystem.

Business also opposes the proposal to introduce joint and several liability which would make businesses responsible for labour standards throughout their supply chains. It is right that businesses are responsible for conducting ongoing due diligence as part of their responsibility to respect human rights. Yet they cannot take responsibility for human and employment rights outside their organisation as they do not have control over other businesses operating in their supply chains.

Their responsibility does however, extend to appropriately responding when they become aware of labour exploitation – either via due diligence, state authorities or a whistleblower. Businesses would welcome the Director introducing a mechanism to privately make companies aware of risks and issues identified in their supply chain. This would be valuable both as a contribution to ongoing due diligence and because these companies could then apply pressure or offer suppliers support in good governance that may lead to issues being resolved. The CBI does not believe that this disclosure should be public because that is likely to push the company at the top of the supply chain towards terminating their relationship with the supplier in which the issue has arisen, rather than acting as a positive force for improving working conditions. This is a particular risk where the supply chain in question is international, and where an absolute approach to liability can come into conflict with the UN development goals.

Sharing information and best practice is facilitated by a number of voluntary industry- and NGO-led accreditation schemes. These set standards as part of rigorous risk assessment and due diligence processes. The CBI does not believe that replicating what is already in place at a national-level is the best use of limited resource. As well as requiring significant resource to administer, accreditation schemes would not alert agencies to suppliers and clients that intentionally and/or persistently do not comply as these relationships are likely to continue operating in spite of accreditation.

The effectiveness of voluntary industry accreditation and codes of conduct is based on their flexibility to continue raising standards as working practices and models of outsourcing in the industry change. Business is concerned that a national accreditation scheme would not be sufficiently flexible to adapt standards as industries evolve or communicate these with businesses, making it an ineffective model to promote best practice. Instead, the Intelligence Hub should increase access to information on the existing kite-marks and platforms that demonstrate good governance. Business is also concerned about the significant resource that would be required of firms to demonstrate that they meet accreditation standards. Particularly if such schemes were introduced per sector, top-tier businesses with suppliers in numerous industries and smaller firms that supply labour to clients in a number of industries would face a considerable duplication of administration.

Recommendations

- Introduce a mechanism to privately notify businesses via the Intelligence Hub where risks and issues have been identified in their supply chains so that businesses can act as an informed client towards their supplier.
- Increase access to information on existing industry kite-marks and platforms that help to set standards and promote good governance via the Intelligence Hub.

Improving clarity around people's pay entitlements will help to minimise unintentional NMW/NLW breaches

Increases in the National Minimum Wage (NMW) and NLW will bring an estimated 3.3 million people in scope by 2020 and significantly increase the number of employers that will need to act to ensure compliance. In this context, and to maximise the effectiveness of limited resource, HMRCs shift towards proactive, targeted enforcement since 2015 is welcome and should continue. Increasing people's

understanding of their pay entitlements has an important role to play in improving their capacity to raise issues of underpayment in the workplace or through an enforcement agency. The risk of underpayment increases in lower-paid salaried roles where variable unpaid overtime can lead to an effective hourly-rate that does not meet the applicable minimum wage.[8]

The number of complaints for underpayment made to HMRC is significantly lower than the estimated scale of the problem. A lack of awareness among lower-paid workers of their pay entitlements is a significant cause of underpayment not being reported. The Low Pay Commission (LPC) found that over half of lower-paid workers think that the law allows them to be paid less than the NMW/NLW wage if they agree to it, and are not aware that tips cannot 'top up' minimum pay. It also found that two-fifths of lower-paid workers are unaware that they can legally claim back lost earnings.[9] The CBI recommends that as part of an extension of the right to a written statement for all workers, a link to HMRCs guidance and complaints procedures should be included to help increase people's awareness of their pay entitlements.

This objective would also be served by increasing people's understanding of how their hourly pay-rate is calculated. A number of employers already provide staff with itemised payslips – this can help employers to correctly calculate the hours worked for NMW/NLW purposes and reduce their risk of non-compliance. The CBI supports the LPCs recommendation to require all mid- and larger employers to include the pay-rate and total number of hours worked for NMW/NLW purposes within the pay period on payslips to increase clarity around people's pay entitlements and employers' pay obligations.[10] It is important that as HMRC and BEIS consult on taking forward this recommendation that proposals are put forward in the simplest form to meet the objective of improved clarity. To aid this, suitable guidance for employers on how to communicate what aggregate pay and leave entitlements are included in the itemised payslip would be beneficial to help staff understand the information.

Increasing the understanding of employers at or near the NMW/NLW threshold of their pay obligations has an important role to play in preventing unintentional non-compliance. Unintentional non-compliance is usually caused by a mistake or common technical error – improving guidance to help employers learn from others' mistakes would minimise this risk. The CBI supports the LPCs recommendation for HMRC to adopt a similar approach to the Regulatory Intervention Reports (Section 89 Notices) published by the Pension Regulator.[11] These publish details of pension compliance investigations and use it as a basis for employers' guidance. A similar approach could be taken for NMW/NLW compliance to improve employers' awareness of common mistakes and technical errors, such as incorrect deductions, out-of-date records of an individual's age and poor record-keeping of individuals' contract hours where they work offsite. It would also improve employers' awareness of HMRCs enforcement activity.

The CBI understands that some employers that pay staff on a system of annualised hours or similar pay averaging arrangements are falling non-compliant of NMW/NLW. These types of arrangements are permitted under the regulations, however its ambiguous wording and HMRCs narrow interpretation of 'salaried hours work' has led to companies being advised that they are in breach of the law. The CBI recommends that HRMC and BEIS review NMW/NLW legislation to remove ambiguity and anomalies in the conditions under which these arrangements can be used as a matter of urgency. The legislation should be amended to enable employers to pay individuals via a system of annualised or averaged hours in a wider range of circumstances than currently permitted. This should be reflected in HMRC's interpretation of the regulations and inform its enforcement remit.[12]

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[8] Low Pay Commission (LPC), Non-Compliance and Enforcement of the National Minimum Wage, 2017, p. 15-16

[9] *Ibid*, p.4

[10] LPC, National Minimum Wage: Spring Report, 2016

[11] LPC, Non-Compliance and Enforcement of the National Minimum Wage, 2017, p. 36

[12] The wider range of circumstances in which a system of annualised or averaged hours should be permitted include where payments are made fortnightly or four-weekly, rather than weekly or monthly; where workers are entitled to payments in addition to their basic salary such as overtime pay, shift premia, commission, or bonuses that fall outside the regulations' narrow definition of a 'performance bonus'; and where annual salary is divided by 52 and paid to cover the work done in 52 weeks of the year, rather than the 52.14 weeks in a full calendar year.

Business supports the nudge-mechanisms introduced by the government to encourage employers to 'self-disclose' and 'self-correct' NMW/NLW breaches. They welcome their effect of increasing the volume of arrears that are identified – accounting for 55% of the total – and the speed with which they are corrected.[13] These tools and guidance, and the incentives for employers to be proactive, should be more widely publicised to encourage NMW/NLW compliance.

Where employers do breach the NMW/NLW, the 'naming and shaming' process acts as a strong reputational deterrent – particularly for larger companies that place great importance on their brand. It also draws public attention to non-compliance and may encourage individuals to come forward with a pay complaint. It is however, an imperfect tool. While its simplicity is a key strength, businesses have raised concerns that the list does not differentiate between those that have corrected the situation and those that have not, or between unintentional and deliberate non-compliance. There would be merit in considering whether the process could be improved to accommodate some additional nuance while retaining its simplicity.

Recommendations

- Recommendation an extension of the right to a written statement to all workers and require that a link to HMRCs guidance and complaints procedures is included in that statement to increase people's awareness of their pay entitlements.
- Recommend the adoption of the LPCs proposal to require all mid- and larger employers to include the pay-rate and number of NMW/NLW hours worked on payslips to increase clarity around people's pay entitlements.
- Recommend the adoption of the LPCs proposal for HMRC to adopt a similar approach the Pension Regulator and use examples of employer non-compliance to inform guidance to raise employer's awareness of common pay breaches.
- Recommend that NMW/NLW legislation is reviewed to remove ambiguity and anomalies in the conditions under which employers can offer systems of annualised and averaged hours.

Applying the GLAA's new, tougher powers, rather than extending licensing, will lead to better enforcement

The introduction of the Undertakings and Orders regime represents a significant strengthening of the GLAAs civil and criminal powers. Labour Abuse Prevention Officers (LAPOs) have greatly increased the resource available for the GLAA to proactively investigate the most persistent and criminally non-compliant employers. The CBI welcomes these developments as proactively targeting persistently non-compliant employers and those most likely to breach their obligations is an effective use of GLAA resources.

The GLAAs licensing power is an effective tool in ensuring labour standards in the agriculture, fishing and food sectors, where it has been introduced with industry support. The CBI is not in favour of the Director's suggestion to extend licensing to the construction and social care sectors because it does not enjoy similar support from businesses in these sectors. Firms in construction and social care think that an increase the number of risk-based and intelligence-led investigations made in these sectors through the Undertakings and Orders powers will have a greater impact on the effectiveness of enforcement.

Assessing future risk rather than past conduct is a key strength of the Undertakings and Orders regime. By contrast there is no guarantee that an employer that has previously been granted a license will demonstrate compliance in the future. Another key strength of the Undertakings and Orders regime is that it targets employers that pose the greatest risk of labour exploitation while minimising the burden on the majority of complaint businesses. Licensing typically places a cost and administrative burden on employers that is not

[13] *Ibid*, p. 22

proportionate to their risk of non-compliance. Burdening compliant businesses in construction and social care is of particular concern given the lean-margin nature of these sectors. A significant proportion of contracts in construction and social care[14] are purchased by the public sector, which both sectors cite as contributing to chronic underfunding.[15] The CBI also doubts the practicality of operating a licensing regime in such large sectors which are predominantly made up by a vast number of SMEs.

Businesses in the social care sector are required to pay annually for registration with the Care Quality Commission (CQC) and are inspected every six to thirty months. The CQC tends to find that a deterioration in the quality of care found on inspection usually indicates a poor standard of practice in other aspects of the service. Inspections act as an early warning sign of the need for inspection in other parts of providers' business. The CQC already conducts interviews with staff on providers' working practices as part of inspection on the quality of employment as it relates to the provision of care and has the right to increase the number of people it interviews should concerns about working practices arise. The CBI believes that there is potential for information sharing partnership to be concluded with the CQC to gather intelligence on the risk that individual providers in the sector pose without the need for additional licensing inspections.

Recommendation

- Conclude an information sharing agreement with the CQC to gather intelligence that can inform assessments of risk in the social care sector.

An approach that balances the need for flexibility and fairness should be taken to enforce the rights of agency workers

The flexibility of the UK's labour market is one of the key drivers of its competitiveness. There are different forms of flexible working arrangements – including many types of agency or temporary worker who may be engaged on variable, zero-hour or short-term fixed-hour contracts. For most people engaged on agency or temporary contracts, working flexibly is a positive choice. Just 8% of people working in the UK are underemployed, working fewer hours than they would like.[16] And for many, agency or temporary work is a stepping-stone to a permanent contract – the UK has the highest proportion of people who transition from temporary to permanent contracts in Europe.[17] Similarly positive attitudes towards flexibility are shared by people working on zero-hours contracts, two-thirds of whom do not want fixed working hours[18] and two-thirds of whom are satisfied with their job, a similar proportion as for employees as a whole.[19]

Agency workers make a huge contribution to the UK economy by increasing businesses access to the people and skills they need. The Agency Workers Regulations (AWR), introduced following a tripartite agreement between the government, CBI and TUC, supports flexibility in the labour market while protecting individual's rights and entitlements. The 'pay between assignments' model is explicitly permitted within the EU Directive and the UK's implementation agreement. It gives individual's the choice to trade their entitlement to equal pay when on assignment for employee rights and greater continuity of income when not

[14] "Over a quarter of construction output is from the public sector and central government is the biggest single construction client". Infrastructure & Projects Authority, Government Construction Strategy 2016-20, October 2016, p. 5 and "At least 70% of all homecare is purchased by the state, mostly by local councils". UKHCA, The Homecare Deficit, 2015, p. 6
[15] The UKHCA estimates that 10% of local councils pay homecare providers at or above UKHCA's Minimum price for homecare at £16.70 p/h, compared with the average paid of £14.58 p/h. UKHCA, The Homecare Deficit, 2017, p. 5
[16] ONS, Underemployment and overemployment, June 2017
[17] EU, European Pillar of Social Rights, Social Scoreboard, Transition Rates from Temporary to Permanent Contracts (3-year average), 2015
[18] UK Commission for Employment and Skills (UKCES), Employee Views on Flexible Contracts, 2013
[19] CIPD, Zero-hours and Short-hours Contracts in the UK: Employer and Employee Perspectives, December 2015, p. 38

on assignment. As the AWR have not been reviewed since their introduction, the CBI believes that it's right that the terms under which the pay between assignments model is permitted should be reviewed, without removing this arrangement altogether. This is important to ensure that the AWR provides an appropriate framework to take account of the practices that have developed since its introduction.

Compliant top-tier businesses require agencies or labour providers to demonstrate compliance with the AWR as a condition of their contract. However, six years after the regulations came into force, businesses remain uncertain about when an individual can transfer to a pay between assignment contract, leading to divergent practices. The CBI recommends that BEIS swiftly brings forward greater clarity in guidance about when this transition is permitted.[20]

Enforcing the regulation of employment businesses is another area which must keep pace with evolving practice. Changes in the nature of the labour market have led to increasing variation in the agency and labour provider model. Umbrella organisations provide individuals with full statutory rights and employment support, consolidate their earnings and ensure all tax is paid. Individuals are employees of the umbrella company, while retaining their flexibility to undertake multiple short-term contracts. This type of employment intermediary benefits agencies or hiring firms by managing the employment, tax and commercial risks associated with engaging temporary workers.

Some umbrella organisations already behave in accordance with the Employment Agencies Act and Conduct Regulations because they believe that the regulations are intended to apply to them.[21] The CBI recommends that all employment businesses, including umbrella organisations and other employment intermediaries, should be required to comply with these regulations. While it is contested whether this requires legislative change, businesses believe that it is the right step, and that the EAS' resources should be increased to allow them to perform this function.

Recommendations

- Recommend that the terms under which pay between assignments contracts are offered is reviewed, and that guidance is issued to bring clarity about when individuals can transition onto this type of contract to ensure consistency and fairness.
- Recommend that umbrella organisations and other employment intermediaries are brought in scope of the EAS Inspectorate's remit, and increase the EAS Inspectorate's resources to allow them to do so.

[20] The CBI first recommended this in 2010 in response to the then Department for Business Innovation and Skill's consultation on Employer's Guidance on new Agency Laws, which published in 2011.
[21] See FCSA Accredited Members, recommended by the REC

Summary of Recommendations

The CBI recommends that the Director of Labour Market Enforcement should:

- Raise the online presence of enforcement agencies through the Intelligence Hub to improve the accessibility of guidance on employment status, rights, labour standards and routes to report problems.
- Recommend that greater clarity about the UK's framework of employment status is brought forward in guidance and that an online test that indicates people's likely employment status is introduced to increase people understanding of their rights.
- Recommend the introduction of a fee-free status only track in employment tribunals for people to quickly determine their employment status and associated rights.
- Take a risk-based approach to proactively target enforcement on employers most at risk of non-compliance to minimise the burdens placed on the compliant majority.
- Introduce a mechanism to privately notify businesses via the Intelligence Hub where risks and issues have been identified in their supply chains so that businesses can act as an informed client towards their supplier.
- Increase access to information on existing industry kite-marks and platforms that help to set standards and promote good governance via the Intelligence Hub.
- Recommendation an extension of the right to a written statement to all workers and require that a link to HMRCs guidance and complaints procedures is included in that statement to increase people's awareness of their pay entitlements.
- Recommend the adoption of the LPCs proposal to require all mid- and larger employers to include the pay-rate and number of NMW/NLW hours worked on payslips to increase clarity around people's pay entitlements.
- Recommend the adoption of the LPCs proposal for HMRC to adopt a similar approach the Pension Regulator and use examples of employer non-compliance to inform guidance to raise employer's awareness of common pay breaches.
- Recommend that NMW/NLW legislation is reviewed to remove ambiguity and anomalies in the conditions under which employers can offer systems of annualised and averaged hours.
- Conclude an information sharing agreement with the CQC to gather intelligence that can inform assessments of risk in the social care sector.
- Recommend that the terms under which pay between assignments contracts are offered is reviewed, and that guidance is issued to bring clarity about when individuals can transition onto this type of contract to ensure consistency and fairness.
- Recommend that umbrella organisations and other employment intermediaries are brought in scope of the EAS Inspectorate's remit, and increase the EAS Inspectorate's resources to allow them to do so.

People & Skills Policy Directorate
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