



HM Treasury



HM Revenue
& Customs



Department for
Business & Trade

Call for Evidence: Umbrella company market

Summary of Responses

June 2023

OFFICIAL



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Executive Summary

The Call for Evidence: *Umbrella Company Market* was published in November 2021 and closed on 22 February 2022. It sought views and further evidence to support the government's understanding of the reasons businesses and individuals use umbrella companies and of the reported issues in the umbrella company market. It was also intended to support policy development of any potential interventions to prevent the forms of abuse within the market.

The main role of umbrella companies in the labour market is to employ temporary workers on behalf of employment businesses and end clients. They do not secure work for the employee. That role is usually carried out by an employment business further up the supply chain. The worker is then supplied to provide services to the end client as directed. The umbrella company role as the employer is to pay salary, deduct Income Tax and National Insurance contributions (NICs) and provide employment rights such as holiday pay, statutory sick pay and workplace pension auto-enrolment.

The government wants to encourage a flexible, dynamic labour market, but this aim should not be achieved at the expense of workers. New ways of working must lead to fair outcomes for workers, while also guarding against abuse of the new systems by fraudulent participants.

Responses to the Call for Evidence were received from the full range of participants in the flexible labour market, including workers, employment businesses, end clients, various representative bodies, and umbrella companies themselves. In total, the government received over 400 responses, a significant proportion of which came from workers, and hosted and attended a number of roundtable events with stakeholders from all groups.

This document summarises the responses received to the questions set out in each of the three substantive chapters of the Call for Evidence.

The Role of Umbrella Companies in the Labour Market

This section of the Call for Evidence set out the government's understanding of how umbrella company engagements typically work, their role in the labour market and the advantages and disadvantages to employment businesses and end clients of using them. It invited views from respondents on these issues and asked questions around why some employment businesses prefer certain umbrella companies and how they develop those preferences.

Respondents that used umbrella companies explained that cost considerations around hiring workers led them towards using them,

and away from direct hires. Some mentioned that an umbrella company would also bear the responsibility for complying with employment rights legislation. There were also comments on the ease of hiring workers for a short period of time and in some cases a worker preference for using an umbrella company. Many of the cost savings highlighted for employment businesses were on their payroll costs but responses also indicated that they did not want to be liable for their end clients' 'employees'. In addition, responses said that there was a preference to hire workers through umbrella companies where they would otherwise have been inside the off-payroll working rules (commonly referred to as "IR35") because using an umbrella company would take arrangements out of the potential scope of these rules.

The main disadvantage of using umbrella companies raised by respondents was non-compliance with tax and employment rules. These issues are addressed in section 4. Other problems included issues around pay which have led to confusion and dissatisfaction for workers. Jobs are often advertised at a higher rate (known as the assignment rate) than the rate ultimately received by the worker. Also, the pay structure used by umbrella companies typically pays the worker a basic salary at National Minimum Wage rate, with their remaining pay calculated from whatever is left of the assignment rate after costs have been met and described as a 'bonus'. Workers reported that this can lead to problems proving their true levels of pay.

Preferred supplier lists were seen as an issue by some respondents. A number of employment businesses will only supply workers to clients through umbrella companies that are on their preferred list. Some employment businesses claimed that an umbrella company is only admitted to their preferred supplier list after passing due diligence checks or receiving an accreditation from one of the industry bodies. Completing regular due diligence checks on umbrella companies was noted as problematic for some employment businesses, citing a lack of ready information. This was one of the prime drivers mentioned for initially checking an umbrella company's compliance prior to operating a preferred supplier list. Umbrella companies that were not classed as a preferred supplier objected to the operation of preferred supplier lists, stating that it effectively created a closed shop by denying them access to the contingent labour market.

Employment Rights Issues in the Umbrella Company Market

This section of the Call for Evidence was directed at individuals working through umbrella companies. It invited views on their experiences of working through an umbrella company. This included why they chose to work through an umbrella company, their understanding of the arrangements and whether their umbrella companies fulfilled their duties as an employer.

The vast majority of workers who told us why they worked for an umbrella company explained that this was at the behest of an end-

client or employment business. They said that they had no option but to take up an employment through an umbrella company, otherwise they would lose the work.

Responses from workers indicated widespread confusion about their level of pay and how it is structured, as well as difficulties in understanding their payslip. Many workers were unclear about whether they were entitled to employment rights or whether they were in receipt of them. This was also illustrated by the number of workers who said that they did not know who was responsible for their pay, employment rights and employment status. Some respondents asked for regulation to be introduced to limit the charges umbrella companies can levy and enforcing the provision of employment rights, as well as other issues.

Workers and their representatives said that the use of preferred supplier lists by employment businesses shows a lack of regard for individual worker's preferences. It was argued that preferred supplier lists could prevent workers from taking up engagements through umbrella companies they had previously used, therefore negating the claimed benefits of using an umbrella company by keeping their Pay As You Earn (PAYE) record in a single place and erasing the benefits of continuity of employment.

Tax Non-Compliance in the Umbrella Company Market

This section set out some of the tax non-compliance issues in the umbrella company market that the government is aware of, including disguised remuneration tax avoidance and fraud. It explained some of the actions that the government has already taken, or is taking, to tackle this non-compliance. It asked employment businesses and end clients about what forms of tax non-compliance by umbrella companies they have encountered, what actions they have taken to ensure compliance within their labour supply chain and what the government could do to tackle fraudulent behaviour by non-compliant models in this sector.

Although disliked by some participants in the labour supply chain, employment businesses' most common action to prevent non-compliant behaviour by umbrella companies is the use of a preferred supplier list. For some respondents, this meant only contracting with umbrella companies accredited by one of the industry trade bodies. Others mentioned various ways they complete due diligence checks of their own. Respondents' suggestions of actions the government could take to encourage compliance in the umbrella company market included regulating the market (although the method of regulation was not specified), introducing a government accreditation for compliant companies, or banning umbrella companies outright. Mandating due diligence checks by employment businesses was also suggested but completing these checks was noted as problematic for some employment businesses.

This summary of responses expands on these themes and sets out the wide range of views that were received. The government will respond to each section and specify the options for the next steps.

Chapter 1

Introduction

1.1 The Call for Evidence: *Umbrella Company Market* was published in November 2021 and closed on 22 February 2022. This document summarises what the government has learned through the Call for Evidence and sets out the government's response.

1.2 In line with markets across the world, the UK labour market has seen changes in the way organisations engage workers and how some workers choose to offer their services. In recent years there has been an observed growth in the use of intermediaries in the labour market. An employment intermediary is a person or business who arranges for someone to work for a third person. Often taking the form of an agency or employment business, an intermediary can be any entity that interposes themselves between the worker and the end client that utilises the workers' services.

1.3 Most umbrella companies employ workers using an overarching employment contract which sets out terms and conditions. This means the company becomes responsible for paying salary, deducting Income Tax and NICs through PAYE. As the employer, the umbrella company also assumes responsibility for the workers' employment rights and entitlements such as holiday pay, statutory sick pay and workplace pension auto-enrolment.

1.4 The government welcomes new ways of working that drive flexibility and resilience in the contingent labour market and understands that umbrella companies may support those aims. However, this additional step in the labour supply chain has led to compliance challenges in relation to tax and employment rights. It is important that while new practices emerge, workers are protected from exploitation and unscrupulous actors are prevented from undercutting businesses that play by the rules.

1.5 The government has heard reports of non-compliance with employment law, including umbrella companies failing to provide employment rights such as holiday pay, and poor market practices, for example, a lack of transparency on pay rates, fees and charges. In addition, HMRC has seen evidence of tax fraud through so-called 'mini umbrella companies', and tax avoidance through disguised remuneration schemes facilitated by umbrella companies, amongst other non-compliance.

1.6 The Call for Evidence sought views from employment businesses, end clients, workers, industry and workers representative bodies, and umbrella companies themselves. It invited views on the role that

umbrella companies play in the labour market, and how they interact with the tax and employment rights systems.

1.7 Stakeholders could respond via email, post or a short online survey available on GOV.UK. Officials from HM Revenue & Customs (HMRC), HM Treasury (HMT) and the Department for Business and Trade (DBT; at the time the Department for Business, Energy and Industrial Strategy) also hosted and attended roundtable meetings with representatives from trade bodies, umbrella companies, and workers.

1.8 There were over 400 separate responses to the Call for Evidence. These were made up of:

- 354 responses from individual workers
- 19 employment businesses
- 15 trade bodies representing various stakeholders
- 8 umbrella companies
- 6 accountants with specific or general interest
- 4 trade unions
- 3 public bodies
- 2 end clients

1.9 A list of organisations that responded to the Call for Evidence can be found at the end of this document. The government is grateful to all the individuals and organisations that took the time to respond. The government is also grateful to those organisations who arranged and facilitated discussions between their members and government officials during the consultation period. The information gained from these responses will inform future policy decisions with the aim of protecting workers from exploitation, creating a level playing field for businesses and promoting compliance.

Chapter 2

The Role of Umbrella Companies in the Labour Market

2.1 This section summarises the responses from employment businesses and end clients about their engagement with umbrella companies and from trade bodies regarding their members' use of umbrella companies. The government also received responses from umbrella companies themselves, both via the survey and through roundtable discussions. The responses from these different perspectives helped towards building the overall picture of the market, and in this summary of those responses we aim to highlight the main concerns raised.

General questions

2.2 The first four questions were aimed at organisations engaging with umbrella companies. They sought to understand the sector in which the organisation operates and the size of the organisation.

Question 1: Do you represent an employment business, or end-client?

Question 2: In which sector does your business operate, or what type of service does it provide?

Question 3: Roughly how many people does your organisation employ directly and operate PAYE for overall? [micro (0-9 employees), small (10-49), medium (50-249) and large (250+)]

Question 4: If you use umbrella companies, roughly how many people are employed via an umbrella company on behalf of your business each year?

2.3 The government received 57 responses to this part of the Call for Evidence. The contributors were:

- 19 employment businesses
- 15 trade bodies representing various stakeholders
- 8 umbrella companies
- 6 accountants with specific or general interest
- 4 trade unions

- 3 public bodies
- 2 end clients

The responses from trade unions on behalf of workers are considered in the main alongside those received directly from workers in Chapter 3 of this document.

2.4 Questions three and four were aimed at end clients and were intended to provide insight into whether the size of a business affected their use of umbrella workers, and how businesses of all sizes balanced using umbrella workers versus direct employees. Respondents were asked to provide information on the number of umbrella company workers they engaged with and their number of direct employees.

2.5 A number of replies were received to these questions. However, only a small number of these responses were from businesses that identified themselves as end clients. The responses from companies involved in the supply of umbrella workers such as employment businesses and umbrella companies themselves will have reduced the validity of the figures. The low response from end clients also resulted in a lack of insight into the sectors that workers themselves suggested are most prominent in their use of umbrella workers, such as teaching, IT, construction and banking.

Questions on working with umbrella companies

Question 5: What factors do you take into account when deciding how to engage staff?

2.6 Respondents explained that a wide range of factors are considered when deciding how to engage workers. Most common amongst these were the cost of different engagement models. Direct hire was not only seen by respondents as the most expensive but also as carrying obligations around employment rights and pensions which are lacking in other engagement models. While some respondents indicated that compliance with tax and employment rights legislation was one of their main drivers, others commented that cost considerations drove some businesses towards umbrella companies. When costs are considered, non-compliant entities will appear more attractive because their non-compliant behaviours allow them to market their services at a lower price.

2.7 A few respondents mentioned the nature of the engagement in question and obtaining the expertise needed for a short period of time, believing it to be easier to hire someone with specialist knowledge for a temporary role if an umbrella company is used.

2.8 Some employment businesses suggested that in some cases there is a worker preference for being engaged through an umbrella company, although some added that if the end client had a preference

for a particular form of engagement, then this may trump the worker's choice.

2.9 Another large employment business stated that although they operated various permissible engagement models for contingent workers, they did not have a preference or make the choice on how workers were ultimately engaged. Workers could be paid via their own personal service company (PSC), via a third-party employment business or through an umbrella company from the employment business's preferred supplier list. Despite the availability of these different options, the worker's choice could be limited by the preferences of the client.

Question 6: If you use umbrella companies, why do you work with them?

Question 7: If you use umbrella companies, does working with them create any advantages? If so, what are they?

Question 8: Does working with umbrella companies create any disadvantages? If so, what are they?

2.10 Employment businesses and end clients cited numerous reasons for using umbrella companies. The most common theme was that umbrella companies are used to reduce operational costs, particularly by reducing the administrative costs associated with engaging workers directly such as by running a payroll. Many of the smaller employment businesses also cited payroll costs as one of the key savings, arguing that they did not have the capability to operate payroll for contingent workers.

2.11 Employment businesses of all sizes cited the cost of administering employment rights and statutory payments, such as statutory sick pay, as another large saving.

2.12 Another reason cited by employment businesses and end clients for engaging an umbrella company was minimising exposure to tax risk. Responses from both employment businesses explained that the insertion of an umbrella company into a labour supply chain means that clients pass on their responsibilities for tax compliance. Responses from workers also supported this view. Umbrella companies expanded these points further in their responses by emphasising what they saw as the positives for the end clients by employment businesses engaging workers through them.

“We find recruitment businesses and end clients work with us because we are able to deal with the administration of employment more efficiently than they are able. The large number of taxation, legislation and rights issues attached to employment can often be more cost effectively done by experts like us, allowing them to get on with their core business. We would argue that compliant payroll outsourcers like us are better placed to act for end hirers in terms of payroll compliance, administration, and even payment processing, leaving employment businesses to focus on sourcing and managing talent provision for end hirers.” Umbrella company

2.13 Some larger employment businesses stated that they only worked with umbrella companies because of the worker's preference to do so. These employment businesses said that they would prefer not to engage workers through umbrella companies but instead place workers on their own in-house payrolls. However, to stay competitive and attract the high-skilled workers needed, employment businesses felt they had to offer an umbrella company model.

2.14 Umbrella company trade bodies explained that the umbrella company model can be beneficial to workers in certain cases, particularly in allowing workers who have multiple engagements with different employment businesses to maintain a continuous employment record from one assignment to the next. This can enable easier access to loans or mortgages. Some workers who move regularly between engagements supported this view in their responses, though others suggested that this benefit could be undermined by some employment businesses use of preferred supplier lists (see paragraph **2.28**). The narrower choice of umbrella company may prevent a worker remaining with the same umbrella company for different jobs, thereby losing the continuity of a single employment. Respondents also suggested other benefits for workers include holiday pay, pensions and statutory payments, as well as management of the tax obligations and the provision of payslips - although the last two points were generally not supported by workers responses.

2.15 Some respondents provided anecdotal evidence of clients making the commercial decision not to engage workers through PSCs where they had determined that they would be required to operate the off-payroll working rules (IR35). The off-payroll working rules are intended to ensure that people who work like employees pay broadly the same employment taxes. Respondents said that many roles that would be assessed as being 'inside IR35' are only offered through the umbrella company model. Although umbrella company engagements do not typically fall within scope of the off-payroll working rules, many respondents talked about 'inside IR35' roles being filled through the umbrella company model as shorthand for roles which would be within the off-payroll working rules if they were filled by workers working through their own PSCs. Other respondents suggested that some end clients had decided to stop engaging workers through PSCs altogether,

instead preferring to use umbrella companies for all of their temporary hires. It was suggested that these were decisions made by clients to reduce administration and exposure to tax risks.

2.16 It was suggested that for some end clients, cost savings are the primary driver for using umbrella companies. First by outsourcing their payroll, but also by subsequently avoiding the risks and costs of potential employment dispute problems. It was also stated that clients are reluctant to engage with the employment status tests involved with off-payroll working compliance, and that they therefore had a preference to outsource their responsibilities in this area to a third party.

2.17 A number of the employment businesses that responded raised non-compliance by umbrella companies as the main disadvantage of working with them. The actions most commonly used by employment businesses to counter non-compliance by umbrella companies, are completing due diligence checks and using preferred supplier lists. Because of the potential to engage with a non-compliant umbrella company, they cited the cost and the additional administrative burden of completing due diligence as a disadvantage. The mechanics around carrying out due diligence on umbrella companies, such as making each party in the labour supply chain visible to all participants, the availability of information and the nature of the checks, is expanded on in paragraphs **2.40 - 2.44**.

2.18 Employment businesses suggested that using a preferred supplier list is the other main method used to reduce the risk of non-compliant umbrella companies entering the labour supply chain. It was explained that many employment businesses choose to populate their preferred supplier lists only with umbrella companies that have obtained an industry accreditation. The reasons for using preferred supplier lists and how umbrella companies secure inclusion on a preferred supplier list are found in paragraphs **2.35 – 2.39**.

2.19 An additional disadvantage of using an umbrella company that was cited is the lack of understanding by workers as to how the process of working through an umbrella company actually works, particularly with regards to issues like pay rates and deductions. Workers' views on this point are discussed in Chapter 3.

“From feedback received by our workers, there is often confusion and misunderstanding regarding how an umbrella operates and how the benefits of this differ to the standard PAYE route.” Large employment business

2.20 A leading source of friction between the worker and the umbrella company is the confusion arising from having two different rates of pay, the assignment rate and the worker's gross pay. The assignment rate is the 'headline rate' often used in job advertisements and illustrates the amount the umbrella receives from the end client. The worker's gross

pay is their contractual wages from the umbrella company. This is what is received by the worker after deductions have been made by the umbrella company from the assignment rate. These deductions include their profit margin, administration charges, and employer's expenses such as employer NICs.

2.21 Comments from trade unions supported views on the confusion caused by the rates of pay advertised by employment businesses. A trade union response quotes the Freelancer and Contractor Services Association (FCSA) definition of how worker pay is calculated. The FCSA is an industry body which, along with other industry bodies such as Professional Passport, offers an accreditation to those umbrella companies that pass their due diligence and compliance checks. The role played by these organisations was mentioned by many respondents.

"The umbrella company receives assignment income paid by the employment business for the work undertaken. Like any employer, the umbrella must cover employment costs, including Employer's National Insurance, holiday pay, the Apprenticeship Levy, and pension contributions. These employment costs are deducted from the assignment income". Freelancer and Contractor Services Association definition

2.22 Umbrella companies were more positive about the benefits of working with them, although respondents from this group recognised that the view of other industry stakeholders, such as trade unions, may differ from theirs.

"Currently the umbrella market has a mixed reputation with some stakeholders. This has caused some workers to resist using an umbrella. Good information and a proper appreciation of the different parts of the 'umbrella market', which as currently described contains much more than just 'outsourced employment and payroll', helps to reassure workers that using a compliant umbrella is a good option for them." Umbrella company

2.23 One final disadvantage noted by a variety of respondents was a lack of regulation aimed specifically at umbrella companies. Many respondents suggested that a lack of regulation enables non-compliant umbrella companies to flourish and expressed concern about compliant umbrella companies being undercut by non-compliant competitors.

"The current lack of clarity in law and regulation. The lack of government oversight and non-existent barriers to entry to setting up an umbrella company despite the fact the company exists to process large volumes of third parties' money and to be responsible

for workers' pay, tax and rights. They can be set up very quickly, have no capital requirements, no limitations on how they use "third party monies" and can go into liquidation in the event of a dispute or claim." Umbrella company representative body

2.24 In some responses and outside the Call for Evidence, some stakeholders, particularly those representing workers, have called for a complete ban on umbrella companies. Umbrella company bodies rejected this suggestion, arguing that a ban would result in the market finding alternative methods of providing labour.

Question 9: Have you noticed any change in the way umbrella companies market themselves and the benefits they offer over the last 5 years? If so, what has changed?

2.25 Replies to this question came mainly from trade bodies. There was a general consensus that umbrella companies now marketed themselves as convenient and compliant for businesses, while also focussing on customer service for the workers and providing value for money for the supply chains in which they operate. Respondents suggested that umbrella companies had previously been promoted primarily as a way to save on tax and increase take home pay, including through allowing workers to claim tax relief on travel and subsistence payments. Those umbrella companies still promoting themselves as a tax saving solution for workers were likely to be viewed as potentially non-compliant. Chapter 3 includes responses from workers on how umbrella companies were advertised to them.

2.26 It was explained that the convenience aspect that umbrella companies primarily market themselves to businesses on, principally relates to the umbrella company taking the responsibility for operating a payroll and administering employment rights, for which a client business or employment business might otherwise be responsible.

2.27 Some respondents suggested it is less likely now that umbrella companies will openly market high rates of take-home pay to workers. They did not make it clear if this is because they think compliance rates have improved, or because information from HMRC and other umbrella companies about identifying non-compliant umbrella companies has made that approach less viable. However, it was suggested by other respondents that some umbrella companies have recently been aggressively advertising rates of take-home pay which seemed likely to rely on tax non-compliance.

2.28 A number of respondents discussed industry accreditation. This accreditation can be obtained from several industry bodies. Umbrella companies rely on this accreditation to demonstrate to prospective customers that they are trustworthy and compliant. Responses from non-accredited umbrella companies suggested that once they achieve industry accreditation, umbrella companies can build long-term

relationships with their labour recruiters. Often these relationships involve an employment business placing an umbrella company on their preferred supplier list. This means the employment business will only use umbrella companies that they have an ongoing relationship with and will not engage workers through umbrella companies outside of this list. In some cases, this meant the worker could not use the umbrella company they have previously engaged through. Some non-accredited umbrella companies felt that this practice effectively resulted in a closed shop, preventing non-listed umbrella companies having access to the same market opportunities as those on the list. In addition, workers' bodies claimed that this shows a lack of regard for individual worker's preferences. There are further comments on preferred supplier lists in paragraphs **2.35 -2.39** in the responses to Questions 13 and 14.

2.29 Across some employment sectors, including education, another development has been a growth in marketing to employment businesses of 'joint employment' models, which see the umbrella company offering a contractual arrangement whereby the umbrella company jointly employs the workers with the employment business. Responses from recruitment trade bodies indicate that although they support innovation, without regulation or oversight models like this can lead to confusion for the industry and the government.

Question 10: Have you considered working with other intermediaries, such as payroll bureaux?
a. If yes, which other intermediaries?
b. If yes, why did you decide not to work with them or why did you choose to work with an umbrella company over these other intermediaries?

2.30 There were very few responses to this question. One umbrella company suggested that employment businesses and clients prefer to use an umbrella company because it enables them to pass on the responsibilities of being the employer. That approach is in line with earlier responses on the advantages of using an umbrella company.

Question 11: The government has heard concerns about supply chains for labour becoming longer. Do you have views on the benefits and drawbacks of longer supply chains and/or why businesses may find that useful?

2.31 There were few direct responses to this question, and the majority of responses came from workers and worker representative bodies (including trade unions). One trade body submitted that there are very few drawbacks to long supply chains, if they are transparent, fair and well-run. The only other positive response argued that long supply chains increase levels of competition and choice, which would improve delivery and increase flexibility. It was also suggested that a

longer supply chain allowed for specialist providers who supplied workers with particular skillsets.

2.32 The remaining respondents who engaged with this question outlined disadvantages to a long supply chain. A common thread among these responses, particularly from workers, is the perceived lack of oversight and visibility that a client has over the chain; the point being made that some clients appear totally unaware that umbrella companies are operating within their supply chain. There was also concern that lengthy supply chains could contribute to precarious work and labour abuse.

Question 12: Do you encourage or require your work-seekers to work through an umbrella company?

- a. Why?
- b. What type of workers?

2.33 Most of the stakeholders that responded to this question expressed the view that clients have driven the increase in hiring through umbrella companies. This was ascribed to various reasons, including that the end client may have taken a commercial decision either not to hire workers in such a way that the role could fall within the scope of the off-payroll rules or to use an umbrella company for roles which would be inside the off-payroll working rules if the worker supplied their services through a PSC.

2.34 Another view was that in areas where skills were in greater demand and the worker held more power in negotiations, the worker may be the driver towards the use of an umbrella.

Questions about preferred supplier lists and due diligence

Question 13: Do you operate a preferred supplier list?

- a. If yes, how many do you use?
- b. If yes, how do you select these?
- c. If yes, why do you use a preferred supplier list?

Question 14: Do you do carry out due diligence on umbrella companies you work with/on your preferred supplier list? How?

Question 15: What proportion of umbrella companies that you work with are accredited by a third-party trade body and which trade body?

2.35 Although there were few direct replies to the questions on preferred supplier lists, respondents tended to address this issue in relation to other questions. They cited the need to ensure compliance with tax and rights rules as the main reason for using preferred supplier lists, with industry accreditation the leading factor in whether an umbrella company was added to a list.

2.36 Overall, responses from employment businesses and trade bodies suggested that preferred supplier lists were used mainly by

larger employment businesses. Smaller employment businesses suggested they made less use of lists as it allowed more flexibility to agree arrangements with the workers they were seeking to place.

“Recruiters and outsourcers build long term, mutually beneficial relationships with a preferred supplier list of umbrella companies, working together to make sure their supply chains comply with legislation such as off-payroll, employment rights and the Criminal Finances Act 2017. We recommend that members have a preferred supplier list and a longer assured list of accredited providers to enable a degree of worker choice, and that members carry out their own vetting and due diligence audits on their providers, although recognise this can be difficult for SME recruiters without expertise and the support of tax and legal functions to manage it.”

Recruitment trade body

2.37 Workers also shared views on preferred supplier lists. Their responses indicated that some employment businesses would direct them to work through an umbrella company from a relatively small list (of four or five), while others would offer any umbrella company that held an accreditation from one of the industry bodies

2.38 Employment businesses also referred to the difficulties faced when a worker requests that they are engaged through an umbrella company that is not on their preferred supplier list and may be non-compliant. Respondents expressed concern that, where a worker decides not to use one of the employment business’s choices, not only does the employment business risk losing business but there is greater risk that the worker is drawn towards a non-compliant umbrella company by the promise of additional take-home pay.

“Workers are still attracted by increased take home pay offered by less compliant umbrella companies, especially in specific sectors such as healthcare and we therefore lose workers to competitors, despite us trying to educate them on the risks involved.” *Large employment business*

2.39 One response from a worker’s representative organisation claimed some umbrella companies pay up to £50k annually for a place on an employment business’s list. They also suggested that recruitment firms can receive additional rewards and incentives for their staff teams. The government was told that a “moderately sized” umbrella can expect to spend over £1m annually buying places on employment business preferred supplier lists. Some responses, particularly those from trades unions, suggested that marketing practices of this kind, which they have described as ‘kickbacks’, could result in umbrella companies obtaining places on lists without the employment business undertaking the necessary due diligence.

2.40 Respondents differed in their views on due diligence. Some reported that restrictions caused by data protection rules prevent the completion of due diligence. Others commented that it can be difficult for the end client to have full visibility of the whole labour supply chain, which hampers efforts to carry out effective due diligence checks. Some commented that, in some cases, clients are unaware of the identity of all of the entities making up a supply chain, including not knowing that umbrella companies are operating within the supply chain.

2.41 Some employment businesses said a large part of their due diligence checks are based around the umbrella company having industry accreditation, but most said that they also carried out additional checks. Respondents stressed that everyone in the supply chain should bear responsibility for carrying out due diligence on the parties that they directly enter into contracts with and that it cannot be left to others to do. There were also calls for government to work with the recruitment industry to ensure that each employment business recognises its responsibilities. Respondents pointed to HMRC guidance setting out good practice for supply chain assurance: www.gov.uk/government/publications/use-of-labour-providers.

2.42 One body representing workers said that some employment businesses don't undertake any due diligence of their own, instead using only umbrella companies that have received industry accreditation. There was broad support from respondents for the role played in the market by these accreditation bodies, though some respondents raised concerns. Some respondents did not think that industry accreditation could be viewed as a guarantee that an umbrella company would be compliant and that further due diligence checks are needed.

*"There appears to be minimal due diligence being undertaken by many recruitment firms, instead they incorrectly believe that choosing an 'accredited' umbrella means that they don't need to undertake any further checks. ... Until recruitment agencies recognise that they are accountable for doing their own due diligence then non-compliant umbrellas will continue proliferating and exploiting workers." **Workers' representative body***

2.43 In response to what form of due diligence they carry out, employment businesses provided details on the type of checks they carried out when engaging with an umbrella company, these included:

- Checks with Companies House that the company is active and registered in the UK
- Verifying company name, registered address, registration number, current status, date of incorporation, company type, nature of business
- Check the umbrella company is registered for VAT
- Director details

- Check their nominated bank account is a UK business account that matches the Companies House record
- An audit involving a credit check, employee contract, valid payslips, RTI submission
- Holiday and expenses policies
- Walk through tests on site when onboarding new workers
- Spot checks within their supply chains

2.44 A minority of respondents argued that the government should play the main role in enforcing compliance with tax, pension and employment laws, by issuing a government accreditation for umbrella companies, and that the HMRC guidance to complete due diligence, which clearly sets out best practice, needs to be supported by a legal requirement to do so.

Question 16: Do you receive all the required information from the umbrella company to accurately complete the Key Information Document?

- Do you independently validate the information received from the umbrella company?
- How?

2.45 Only a small number of respondents provided answers to this question. Those that did respond thought the Key Information Document (KID) was provided (if at all) too late in the recruitment process and clearer information was needed from recruiters at the time of the initial job advertisement. It was suggested that more enforcement may be needed to ensure KIDs are being provided. Workers' views on the KID can be found in paragraphs **3.52 – 3.56**.

2.46 A large employment business advised that they check information from umbrella companies as part of their internal audit procedures but, as the onus is on the umbrella company to provide the correct information, they have very little recourse to verifying it themselves.

2.47 Another respondent commented that it is unusual for employment businesses to independently validate the information provided by the umbrella company but that some do undertake periodic checks.

Government response

2.48 The government is grateful to the businesses and trade bodies who engaged with the questions in this chapter of the Call for Evidence. The responses received supported the government's understanding of the reasons for which businesses choose to engage workers using umbrella companies. It is clear from responses that many businesses value this model of engagement, and the government is therefore not minded to explore banning umbrella companies. However, what was also apparent was that among the main drivers given for using umbrella companies were the reduction in costs to employment businesses and clients of including workers on their own payrolls and

the shielding that the model provides from the consequences of incorrect treatment of workers.

2.49 It was noted that the pursuit of engaging labour at as low a cost as possible has driven some businesses to engage workers unknowingly through non-compliant umbrella companies that are able to offer workers' services at a lower cost because of their non-compliant behaviour. This situation has led to an unlevel playing field in which compliant umbrella companies are put at a competitive disadvantage.

2.50 Businesses generally said that they undertook some due diligence activity when engaging a worker through an umbrella company, but many were reliant on accreditation awarded by third-party bodies and undertook few, if any, additional checks to establish the legitimacy of the umbrella companies that they dealt with. The government was also told that in some cases businesses did not know the identity of parties that made up their labour supply chains, or even whether workers were being supplied via umbrella companies.

2.51 Taken together, these findings suggest that the structure of the temporary labour market incentivises some businesses to seek to engage workers in a way that shields them from responsibility for whether these workers are engaged in a compliant way. The government will publish a consultation including options that would seek to reduce non-compliance in the umbrella company market by addressing these counterproductive incentives by giving businesses a greater stake in the compliance of those through whom they engage labour. The government will invite views on how potential options could be designed in order to ensure that they are most effective and what their potential impacts of any changes might be for businesses using and supplying temporary labour.

2.52 The government also notes that respondents raised concerns about employment rights regulation in the umbrella company market. The consultation will also invite views on options to respond to these concerns.

Chapter 3

Employment Rights Issues in the Umbrella Company Market

3.1 The questions in this section of the Call for Evidence were aimed at individuals who have experience of working through umbrella companies. It was intended to gather background information on which sectors engage workers through umbrella companies and the roles those workers carry out. It attempted to gauge the level of flexibility in the labour market by asking for the number of umbrella companies that engaged each worker, how many different engagements they undertook via each umbrella company, and how much of their income derived from their umbrella company engagements.

General questions

Question 17: Which sector do you work in? For example, hospitality, retail, or IT.

Question 18: How would you describe the main role(s) that you perform?

3.2 There were 342 responses received from workers in over 20 different sectors. The largest group (36% of respondents) worked in an IT role of some form. Other prominent sectors include financial/banking (22%), education, and various public sector roles. 3% of respondents did not disclose the sector in which they worked.

3.3 Within individual sectors, responses suggested that there was a diversity of roles performed by umbrella company workers. For example, in the financial/banking industry respondents ranged from those engaged in IT change projects such as IT system implementation or project management, to managerial team leader posts in call centres. The trend differs in the education sector in that respondents were uniformly supply teachers engaged through employment businesses.

Question 19: How many umbrella companies are you employed by currently?

Question 20: How many different assignments have you worked while being employed by the same umbrella company?

Question 21: Approximately, what percentage of your annual income comes from roles performed while employed through an umbrella company?

3.4 238 of the 342 individual respondents who answered question 19 reported that they were currently working through one or more umbrella company. 214 of those (90%) were only working through one. 119 (50%) of those workers operating through one umbrella company only had one engagement through that umbrella, and 80 of those had 100% of their earnings through that engagement. This means 33% of the workers who answered this question had one umbrella company job, with 1 assignment, producing 100% of their earnings. Table 3.A shows the number of umbrella companies each respondent worker is employed by.

Table 3.A

How many umbrella companies are you currently employed by?	No of respondents	%
1	214	90%
2	17	7%
3	4	1.5%
4	2	1%
7+	1	0.5%
Total	238	100%

3.5 Only three of the respondents who answered question 19 stated they worked for four or more umbrella companies. The response from one of those workers indicated they worked via umbrella companies to simplify their tax affairs.

“Was advised by agency to either use an Umbrella Company or set up my own Limited Company - I was nervous of managing my own tax affairs so opted to go Umbrella.” Worker

3.6 218 responses to question 20 were received. The majority of respondents had only worked one assignment through their umbrella company engagement. Table 3.B breaks down responses to this question.

Table 3.B

How many different assignments have you worked while being employed by this umbrella company?	No of respondents	%
1	127	58%
2	34	16%
3	25	11%
4	12	6%
5	5	2%
6	2	1%
7+	13	6%
Total	218	100%

3.7 Question 21 asked how much of an umbrella company workers' income comes through umbrella company engagements. The purpose of this question was to help establish whether umbrella employees receive a large percentage of their income through the umbrella company or from other sources.

3.8 216 of the 342 respondents provided an income breakdown. 145 (67%) of those stated that 100% of their income was through umbrella companies. Table 3.C breaks down response to this question.

Table 3.C

What % of your income is from umbrella companies?	No of respondents	%
0-25	18	8%
26-50	13	6%
51-75	12	6%
76-99	28	13%
100	145	67%
Total	216	100%

3.9 To establish how often these workers moved between jobs, the responses from the 145 respondents who said that 100% of their income came through umbrella companies were analysed. 127 of those said they only worked through one umbrella company, and 80 of those had only one engagement through the umbrella company. This suggests that end clients are using umbrella companies for longer-term roles rather than just as contingent labour. This is supported by responses from workers, which indicated that they did not consider themselves contingent workers at all, but that they had been engaged using an umbrella company in order to release the client from their employer

responsibilities around deducting tax and NICs and providing employment rights to workers.

Question 22: If you have been working for umbrella companies for more than a year, have you noticed any change in the way umbrella companies market themselves to workers and the benefits they offer? What has changed?

3.10 Some workers commented that umbrella companies now emphasise the benefit and convenience of having a single employer who can provide a simplified record when working through multiple employment businesses.

3.11 Workers' representative bodies commented that some umbrella companies constantly assert in their advertising materials that they are compliant. The compliant-badged marketing appears to be recognition that there some non-compliance within the industry. One trade body made the point that although "compliant" is the keyword used in much of the current marketing by umbrella companies it is unclear what that means as the materials don't state exactly what the umbrella company claims to be compliant with.

3.12 The government received some responses from workers which suggested that they had been targeted by umbrella companies using disguised remuneration schemes.

"I was told:

- everything is 100% HMRC compliant (on the website, in the document provided)

- all my employment taxes are being paid by the umbrella company (on the website, in the doc provided)

- what is called "loan" will never have to be repaid; it was called "loan" only to pay less in taxes. (via the email)" Worker

3.13 Some responses noted an increase in the number of umbrella companies engaging in marketing.

"There is so much more marketing by Umbrella Companies now, it used to feel much more word of mouth/business affiliated and it didn't feel like there were many around. They're everywhere now!" Worker

Questions about working through umbrella companies

3.14 This section asked umbrella company workers about their working experience, gathering information on rights, tax, pay, and why they work through an umbrella company.

Question 23: Do you know which organisation is responsible for your pay, employment rights and employment status?

3.15 145 of the respondents answered this question. The majority of those, 62%, stated they knew who was responsible for their pay, rights, and status. There were reservations around the payslips and whether they could be easily understood. This is discussed further at question 28, below.

3.16 Although the majority understood responsibilities, there was concern about the fairness and legality of being paid a basic salary at National Minimum Wage rate with the remainder of salary paid as a 'bonus'. Some respondents stated that umbrella companies have to pay workers in this way to enable workers to move between jobs without having to change contracts. This issue is expanded on in para **3.37**

3.17 Of the remaining 38% that didn't understand where responsibilities sit in the labour supply chain, the complexity of the chain was often cited as a reason.

"There are so many elements involved it's difficult to know who is responsible for what. I'm hired by an agency to work for a company that uses an Umbrella but hires my services to another company that then provides support to the main contractor, meanwhile timesheets are submitted through yet another company/system."
Worker

3.18 Many workers were unaware that they were entitled to employment rights at all. Several respondents commented that they understood themselves to be employees but received none of the associated employment rights. It is unclear whether this view is because their rights were not explained to them, or they had not read or understood any explanatory documents that were issued, although one worker said the documents provided to them explained that they had no rights.

Question 24: Why do you work for/through an umbrella company?

Question 25: If you have chosen to work through an umbrella company rather than being paid directly by the employment business, why was this?

Question 26: How did you choose which umbrella company to work through?

3.19 A large majority (95%) of the 234 who responded to this question stated they had no option but to work through an umbrella company if they wanted to take on a particular role with a client and/or employment business. A number of workers explained that they had previously worked through PSCs but that end clients had moved away from engaging people in this way, citing the reforms to the off-payroll working rules, and would only offer roles through umbrella companies. Under the off-payroll reforms of 2021, the responsibility for determining the employment status of a worker that provides their services through their own intermediary typically falls to the end client. Many workers have suggested that there is an unwillingness from end clients to assess whether or not the rules will apply and consequently they have moved to a different hiring model. Some have indicated that this is due to end clients' concerns around making an incorrect assessment, while others suggest it is a convenient way for end clients to outsource their responsibilities as an employer.

3.20 Some respondents even went as far as to say if they didn't agree to work through an umbrella company, they would not be able to find any work at all.

3.21 A number of respondents when speaking about the off-payroll working rules spoke about roles being assessed as being 'inside IR35', or similar. This was taken to mean that the role had been assessed as being one that would meet the tests for a contract of employment had the role been a direct engagement. Typical umbrella company engagements are not in scope of the off-payroll working rules and cannot therefore be 'inside IR35'. However, responses indicated a preference among clients and employment businesses to engage workers through umbrella companies for roles which would fall within the rules were they structured through a PSC – hence the phrase 'inside IR35' being used.

3.22 Workers who had chosen to work through an umbrella company gave positive reasons for doing so. The comments fit with the profile of a worker who carries out a number of short-term itinerant jobs and stresses the benefits an umbrella company can provide for them over the option of being employed by a succession of employment businesses or using a PSC and the administrative burdens this entails.

3.23 204 people provided responses about how they chose an umbrella company, with 33% of those stating they were not able to choose which umbrella company to use when accepting a role. Many workers were given a limited choice, some were offered up to five umbrella companies to choose from, while others could choose from a longer list, typically made up of accredited umbrella companies. Table 3.D breaks down responses to this question.

Table 3.D

Umbrella company choice options	No. of responses	%
Free choice	37	18%
Limited or accredited PSL choice	100	49%
No option	67	33%
Total	204	100%

3.24 A trade union respondent agreed that the choice to use an umbrella was typically driven by clients and employment business, citing the saving of administrative costs such as the payroll and the opportunity for the end client to minimise their own exposure to risk by effectively outsourcing their responsibilities for employment rights. With regards to the process through which particular umbrella companies are selected, they suggested that an employment business can receive ‘incentives’ from an umbrella company looking to obtain new clients. Many workers complained about these alleged financial links between employment businesses and umbrella companies.

“Recruitment agencies demanding ‘kickbacks’ or incentives from umbrella companies for being added to a preferred supplier list/recommended to clients, even sometimes including fitted kitchens and holidays for recruitment agency directors. This then incentivises non-compliant providers (who because of non-compliance have higher margins) to offer large bonuses to gain access to potential clients.” Trade union

Question 27: Are you issued with terms or a contract by the umbrella company?

3.25 Of the 226 respondents who replied to this question, 159 (70%) were provided with a contract by the umbrella company. 34 (15%) said they were not given one, and 33 (15%) did not know if they had received one. Some respondents were content with the contract and information provided by the umbrella company, but others felt that the information set out in the contract could have been clearer.

3.26 A number of workers reported that they had not received a contract and many were unhappy at the lack of information provided.

Question 28: Do you receive a payslip from your umbrella company and, if so, do you understand the payslip?

3.27 121 workers of the 131 who responded to this question reported they received a payslip, four reported they weren't given one, and six didn't know. However, of those that did receive a payslip around 60%

did not understand it. Despite this, there were some favourable comments from umbrella company workers about payslips.

3.28 For those that didn't understand their payslips, respondents cited various problems:

3.29 *A general lack of clarity on the payslip.* It is unclear from responses whether this is due to poorly designed payslips, the underlying complexity of the information they are trying to convey or a possible lack of understanding on the part of the worker.

"The wording was always in such a way it was not clear for a lay person to understand. And post start of employment the deciphering of the payslip and how pay is calculated is completely nonsense."
Worker

3.30 The payslip shows deductions that a worker would not normally expect, such as employer NICs and Apprentice Levy. As set out in the Call for Evidence, it is common for these employer liabilities to be visible to umbrella company employees, sometimes giving the impression that they are being deducted from workers' pay when this is in fact not the case. This was raised by a large number of respondents and is discussed in greater depth in paragraph **3.36** in response to question 29.

3.31 *Not understanding the make-up of pay.* Many workers explained that their pay was broken down into two elements on their payslips; basic pay up to the level of National Minimum Wage with the remainder showing as a 'bonus' or similar. Workers suggested that this has caused problems for them in trying to prove employment for loans or mortgages.

"My pay break down is chaotic. I don't understand why there is a bonus allocation plus salary plus holiday pay included." **Worker**

3.32 *Variances in pay week-to-week.* Some respondents questioned why they were paid different amounts each week after completing the same work.

Question 29: Do you have any other feedback on the experience of working through an umbrella company?

3.33 A large number of issues were raised in response to this question, including some which have been covered directly in response to the specific questions above.

Deductions from advertised pay

3.34 Receiving lower pay than expected and the perception that workers paid their employers' NICs were raised by approximately 50% of those respondents who worked through an umbrella company.

3.35 Many workers raised concerns that the pay rate advertised by end clients, which is what they would be paying to arrange for a worker's services to be provided ("the assignment rate") differs from what is paid by the umbrella company as a worker's gross pay. There were widespread expressions of anger or dissatisfaction from respondents at the rate of pay they ultimately received from the umbrella company compared to what was perceived to be the original salary offer from the employment business or end client.

3.36 This stems from the amounts retained by the umbrella company from the assignment rate to cover the costs of employment such as employer NICs and Apprenticeship Levy. These employment costs can ultimately appear on an umbrella worker's payslip or reconciliation statement which can be issued alongside the payslip. The appearance on the payslip therefore leads the umbrella worker to believe they have paid the employer's costs from their own pay. Many respondents expected to be paid at the assignment rate advertised by an end client or employment business and commented on the confusion caused by this way of advertising a role and processing umbrella company fees. It was suggested that in some cases this confusion could be fostered deliberately.

"This complicated structure is little understood and fraught with misunderstandings. Sometimes that is unintentional but, there is anecdotal evidence that some recruitment company consultants might state the [assignment] rate to lure the worker in and then the worker only realises that there are deductions when they get paid through the umbrella." **Workers' representative body**

Split of pay between basic rate and 'bonus'

3.37 Another pay related issue raised by workers and by trade bodies and unions representing workers is the payment structure used by many umbrella companies. Respondents suggested that many umbrella companies pay the National Minimum Wage (NMW) for the hours worked plus an additional, variable element, typically referred to as a bonus or commission (but still paid through payroll and subject to required Income Tax and NICs deductions).

3.38 It was suggested that the use of this pay structure is partly designed to protect umbrella companies, which may have limited financial reserves, from having to pay workers the full agreed rate for work undertaken until they have been paid by the employment business or end client.

3.39 Umbrella companies themselves commented that this way of structuring pay enables them to retain workers without repeatedly amending the terms under which they are engaged, for example if they

move to a higher or lower paid role when working for the same umbrella.

3.40 It was also mentioned that paying a basic salary at NMW rate would mean that paid holiday is also calculated at this rate.

Opting out of the Conduct Regulations

3.41 Responses received from accountants suggested that umbrella companies require workers to opt out of the [Conduct of Employment Agencies and Employment Businesses Regulations 2003](#) (the Conduct Regulations) so that the 'bonus' element can be withheld by the umbrella companies if they have not been paid by the employment business when they process the workers' pay. This is linked to the split of pay between a basic NMW-rate element and a 'bonus' element as discussed above.

3.42 The opt out was designed to give a choice to contractors who want to operate through their own limited company but may not want to be subject to the Conduct Regulations.

3.43 For workers who don't opt out, the Conduct Regulations provide various protections:

- The worker will get paid by the employment business even where they do not receive payment from the end client
- The employment business cannot restrict workers from providing services directly for the end client after the end of the contract
- The employment business cannot withhold pay in certain circumstances

3.44 A requirement to opt out of the Conduct Regulations was raised as a concern by some respondents because of the lower level of protection that will be afforded to workers.

Failure to provide employment rights

3.45 A number of workers suggested that they were not in receipt of any employment rights from their umbrella companies. These comments mostly came from those who did not know who was responsible for their pay, employment rights and employment status (paragraphs **3.15 - 3.18**). Many workers appeared to be confused about what employment rights they are entitled to when working through an umbrella, resulting in some just assuming they didn't have any.

Umbrella company fees

3.46 Many respondents expressed dissatisfaction with the level of charges levied by umbrella companies upon workers. Respondents felt that they were paying for the privilege of getting their own pay and receiving no other benefit from their involvement with the umbrella company. Various levels of fee were quoted by respondents who were working through umbrella companies.

“I would prefer not to have any involvement with umbrella companies at all. I feel that they do nothing other than cost me money. They take a cut of my wages in order to process my pay, for seemingly no additional benefit to me. I have worked with supply teaching agencies before that did not use umbrella companies, and there is absolutely no difference to my end user experience other than the cut of my wages taken by the umbrella company.” Worker

“How much of my salary is taken by the umbrella company was a bitter pill to swallow! At £10 per day, it represents 13% of my income. I think that there should be stricter regulations about how much these companies can charge and when.” Worker

Regulation of the umbrella company market

3.47 A number of respondents commented on the issue of regulation of umbrella companies, with more than one going as far as to describe the market as “the wild west”. It was suggested that the introduction of regulatory standards could improve the market for workers. Respondents suggested a desire for regulation of:

- The amount an umbrella can charge the worker for services such as processing their pay
- Standard of payslips
- Employment businesses directing workers to use umbrella companies in which they hold an interest
- Enforcement of the provision of employment rights

Cyber security

3.48 In January 2022 a number of umbrella companies were the victims of concerted cyber-attacks. Respondents expressed worry at the potential leak of their personal details and the level of security that umbrella companies were required to have to protect these details.

Delays in payment

3.49 Some respondents expressed their worries over actually receiving their pay. This is mainly due to delays in payment when the end client has been slow to pay, leading to a knock-on delay down the supply chain. One comment mentioned a delay of 5 months to get paid.

Questions about the Key Information Document (KID)

3.50 The Call for Evidence sought views on the Key Information Document. This is the document which employment businesses must provide to work-seekers when they sign up with them and before any

work-finding services can commence. It should set out pay related information for the work-seeker. The intended effect of the KID is to ensure the individual worker has the information to make a better-informed choice about how they wish to be engaged by improving transparency around the identity of their employer and the deductions that will be made from their gross pay.

3.51 The answers workers provided to these questions will inform policy development aimed at protecting workers' rights and continuing to allow flexibility in the labour market.

Question 30: Do you know who is responsible for issuing the Key Information Document to you?

Question 31: Are you, or have you been, issued with a Key Information Document when you sign up with an employment business for the first time?

Question 32: Are you, or have you been, re-issued with a Key Information Document when the information changes?

Question 33: Has receiving a Key Information Document helped you to better understand what you can expect to be paid, at what point and by whom?

3.52 There was a low response rate to all the questions relating to the KID. This could indicate a lack of worker understanding over who should be issuing them with a KID, or a lack of awareness of their existence. Some respondents were aware that it is the responsibility of their employment business to supply a KID.

3.53 Only 154 of the workers who responded to the Call for Evidence answered the question asking whether they received a KID when they signed up with an umbrella company. 77 people or 50% of those respondents stated they received a KID when they were first engaged. 66 respondents (43%) replied they didn't receive one. The remaining 11 did not know if they had received one.

"I have never been provided with one. No-one has ever mentioned one. When I discuss positions with recruiters that will require the use of umbrella companies, no KID is available, and it seems clear that if any is provided it would only be after contracts are signed and work commences." Worker

3.54 70 people responded to the question about whether they received a KID following a change in circumstances, such as redeployment. Only seven reported receiving a KID after redeployment. 57 (81%) stated they didn't receive one. Six people did not know.

3.55 There were a number of comments on the value of the KID. A recurring theme from workers that received a KID was that they

needed the information early in the hiring process for it to be useful to them. This meant that workers were not aware of information that may have affected their decision on whether to take a role, such as the rate that they would be paid by the umbrella company (as opposed to the assignment rate, of which they were previously aware).

3.56 Some workers said that they found the KID to be helpful and that it fully explained what they needed to know. Those workers who did not like the KID mainly commented that the information on them was too high-level and did not contain the detail they needed to relate them to their roles. Another response suggested that the KID was difficult to understand.

Government response

3.57 The government extends its thanks to those who shared their views and experiences of working through an umbrella company. Responses from workers highlighted that the decision over whether to use an umbrella company tends to be driven by either the client organisation or the employment business in a labour supply chain, rather than the worker, which is at odds with some of the marketing material which promotes various benefits to individuals of working in this way. Many workers told us that these benefits did not align with their experiences and, indeed, most said that they would prefer to work in some other way. It should be noted that respondents to the Call for Evidence may represent an uneven sample of the whole umbrella company worker population and so the prevalence of this view cannot be extrapolated to the whole population. Nevertheless, workers' responses have illustrated that there is a need to ensure that while people work in this way, they are provided all of the information they require to understand the arrangements and the employment rights to which they are entitled.

3.58 It was clear from workers' responses that there was a great deal of confusion around pay and deductions when working through an umbrella company. In response to this and to support workers' understanding of their umbrella company arrangements, HMRC updated its guidance for umbrella company workers in November 2022. This can be found on gov.uk at www.gov.uk/guidance/working-through-an-umbrella-company.

3.59 As well as this, the government was concerned to see the number of workers who reported that they had not or did not know whether they had received Key Information Documents when signing up to work an assignment through an umbrella company. In November 2022, BEIS published guidance for workers paid through umbrella companies to help them understand the Key Information Documents that they must be provided by the employment businesses that supply their services. This guidance is available at www.gov.uk/guidance/key-information-document-guidance-for-agency-workers-paid-through-umbrella-companies.

3.60 The government will continue to look for ways to support workers that are engaged through umbrella companies to ensure that they have the information they need to understand how these arrangements work and that they are being treated appropriately by their employers.

Chapter 4

Tax Non-Compliance in the Umbrella Company Market

4.1 As set out in the Call for Evidence, the government is aware of the tax non-compliance of certain operators in the umbrella sector. Chapter 4 of the Call for Evidence invited respondents to share their experience of any of the non-compliant tax schemes set out in the chapter, the steps they take to prevent non-compliant operators from entering their supply chains and any actions that they think the government could take to support businesses to prevent this from happening.

Question 34: If you are an employment business or end client which uses umbrella company employees, do you take any steps to prevent umbrella companies which may engage in tax non-compliance from entering your labour supply chains? If so, what?

4.2 Those respondents that answered this question broadly took a similar line. The most common measure taken to prevent non-compliance is to use a preferred supplier list, often made up only of umbrella companies with an accreditation from an industry trade body.

4.3 Some respondents noted that as they only use accredited umbrella companies on their preferred supplier list, due diligence and review of the umbrella companies' payroll processes are part of the accreditation procedure. In some cases however, it was recognised that an accreditation is not a guarantee of compliance.

4.4 One response from an umbrella company alleged that non-compliance occurs in accredited umbrella companies aided by the business practices of the industry accreditation bodies. They suggested that audits are pre-notified to umbrella companies, therefore reducing their effectiveness.

4.5 A small number of respondent employment businesses stated that they refuse to engage with umbrella companies that are not on their preferred supplier list and in those cases workers are paid under PAYE on the employment business's own payroll. Further discussion on the use of preferred supplier lists and accredited umbrella companies is at paragraphs **2.35 - 2.39**.

4.6 A number of respondents mentioned due diligence or audits that they completed. The measures included checks at Companies House, spot checks on workers' records to ensure there is an audit trail to indicate taxation has been correctly dealt with and verifying pay slips to check for anomalous entries. One respondent explained that their procedures include periodically obtaining written attestation from umbrella companies that they operate in compliance with tax and employment rules.

4.7 Some larger employment businesses explained that the agreements they make with umbrella companies prior to commencement expressly forbid any form of tax avoidance, disguised remuneration schemes or offshore arrangements. They also mentioned specialist teams within their organisations that review contracts, payslips, and invoices. One smaller employment business explained it operated a system where it met face-to-face with the representatives of a new umbrella company before using them.

Question 35: How could employment businesses or end clients, who use umbrella companies, do more to ensure tax compliance in their supply chain?

4.8 Responses to this question were received from employment businesses, end clients and representative bodies for the various types of stakeholder. Because of the diversity of respondents, the suggestions were extremely varied, ranged from ensuring end clients have visibility over the whole labour supply chain to introducing government regulation. The suggestion to ensure supply chain visibility expanded to include end clients assuming responsibility for compliance throughout the labour supply chain.

"Although the umbrella company is at the end of the supply chain, clients should be obliged to know who is engaged in the supply chain. By linking the actions of suppliers down the supply chain to the end client at the top, improvements in compliance can be achieved throughout the chain. This means the end client must bear some responsibility for ensuring compliance among its suppliers."
Recruiters representative body

4.9 Preferred supplier lists were raised in different respects. One respondent suggested that a smaller pool of umbrella companies should be allowed onto an employment business's preferred supplier list, enabling tighter monitoring and easier due diligence. However, they also noted that restricting workers' choices would not be popular with the workers and may lead to a loss of business.

4.10 A number of replies mentioned due diligence. Some respondents said they already carry out various checks and there is little more they could do in this area. A few said that any further requirement for checks would lead to excessive expense on their part. One commented it is not

possible for all parts of the labour supply chain to carry out due diligence because of data protection laws. However, some took an opposing view in suggesting that there was a need for due diligence checks to be made mandatory.

“Recommend employment businesses and clients carry out regular due diligence to PSL umbrella companies. Should be initial due diligence when first engaging and then monitored. From tax perspective, compliance is deemed as umbrella company correctly accounting for PAYE / NIC and remitting to HMRC and compliance with NMW.” Large accountancy firm

Question 36: Do you have experience of umbrella companies engaging in any related schemes or models to those covered above, or any other tax non-compliance not covered in this paper? If so, what are they?

4.11 A small number of respondents reported that they had come across umbrella companies engaging in tax non-compliance. Among respondents who reported that they had done so, the most common form reported was that of disguised remuneration schemes. Some employment businesses indicated that they were aware of umbrella companies who may be operating such schemes, one of the warning signs being offers of take-home pay around 90% of gross pay. The employment businesses in question also said if these signals were visible, they would not contract with those umbrella companies. Other indicators of non-compliance have come to light through the due diligence procedures carried out by employment businesses. One example given was a check of a worker’s payslip revealing that part of their pay was being paid as a disguised remuneration ‘loan’.

4.12 A response from a large legal practice reported inappropriate arrangements between end clients, employment businesses and umbrella companies in which avoidance measures are offered to workers and the benefits are shared between all parties involved.

4.13 A representative body for large businesses argued in their response that the end client is removed from each part of the supply chain, and therefore each business in the supply chain must be responsible for their own compliance because the end client is not in a position to ensure that parties several links in the chain below them are compliant.

4.14 Another activity commented on by a trade body representing employment businesses is that of joint employment.

“Where a worker is engaged under a joint employment arrangement, their employment status is reflected through their employment contract, which will specify both the agency and umbrella company as the employers. With this model it is difficult for

workers to know what the nature of their relationship is with the employment business and the umbrella company as their obligations to the workers are unclear.” **Employment business representative body**

4.15 Aside from comments that were directly tax related, there were several respondents who had not identified any tax non-compliance but had noticed poor practice in the area of employment rights.

Question 37: How could the government support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain?

Question 38: What further steps, if any, do you think HMRC and government should take to prevent or tackle non-compliant models outlined in this section?

4.16 Although these questions were intended to be tax specific, responses were not limited to actions that the government could take to reduce tax non-compliance. A number of the suggestions put forward also covered, explicitly or implicitly, employment rights non-compliance.

Regulation of the umbrella company market

4.17 The most common response to these questions was a call for regulation of the umbrella company market. Many of the requests for regulation involved calls for a strict government-led oversight of the sector with the view that clear regulation and strong sanctions for non-compliance would restore credibility to the umbrella company market.

4.18 One respondent commented that regulation is essential to ensure a level playing field for all operating in this part of the labour market. As well as being raised as a way to tackle tax non-compliance by umbrella companies, regulation was put forward as a way to ensure that workers are treated fairly and in line with legal requirements. Many respondents did not set out in detail what they thought regulation should look like in practice, although some did provide further detail.

“We believe that proper regulatory framework and oversight from a dedicated government established body over the umbrella companies market is key to support employment business and end clients in ensuring tax compliance in their supply chains and that the balance of responsibility for the same should be shifted from employment business and end clients towards said dedicated governing body.” **Large employment business**

Government-led accreditation (kite-marking)

4.19 Some form of government-led accreditation was suggested by several respondents, who felt that it could help employment businesses to avoid non-compliant umbrella companies. One umbrella company stated that they applied to be accredited by an industry body because of the absence of an alternative government quality mark.

4.20 Stakeholders from across the sector said that they would like to see government or external oversight of the umbrella company market because they feel that the current accreditation and self-regulation system from within the industry is not working fairly and needs reform. They felt that an accreditation is required in order to be able to enter the market and that this acts as a barrier to entry for smaller or newer firms.

Guidance for businesses

4.21 A repeated theme was a call for the government to firmly set out what is considered best practice within the sector. This would encourage transparency and allow non-compliant schemes to be identified at an early stage by businesses.

“The government can support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain by clearly setting out what good practice looks like - from how umbrella deductions should be communicated to workers to what a PAYE payslip should look like. A suggested rate calculator (including how umbrella rates should be uplifted from PAYE rates)”

Employment business

Deduction of tax at source

4.22 One employment business suggested that the only way to ensure that the correct tax is paid is for it to be deducted at source by the end client.

“We believe however, and have done so for many years, that in order for a truly ‘level playing field’ to exist in this sector that the application of employment taxation should be made at source, much as the Construction Industry Scheme (CIS) is applied. Moving this to the end client point brings it logically to the same point of IR35 determination and the HMRC ‘tracking’ of gross payments through the Intermediaries legislation can also simply be shifted to this point.” **Employment business**

Tackling phoenixing and transfer of debt in the event of insolvency

4.23 Umbrella companies are typically light on assets and are often liquidated with debts owed to HMRC and/or workers, only for the same controlling mind to set up another company. There were calls for action to tackle so-called phoenix umbrella companies being allowed to close and re-open under a different guise. It was suggested that introducing rules which would allow outstanding debt to be transferred to directors and shareholders would serve as a deterrent to non-compliance. Further suggestions around this theme included enforcement bodies working with Companies House to ensure directors of failed umbrella companies were unable to immediately restart under a new name.

4.24 Some respondents felt that any outstanding liabilities, either for unpaid tax or workers' pay should be transferred back up the labour supply chain to the end client, rather than to the directors and shareholders of the companies a suggested above.

"On ease of opening/closing umbrella companies, suggest regulating or making (shadow) directors liable personally (incl tax). Potential support for transfer of debt, specifically to individuals / entities involved in or facilitating the non-compliance." Accountancy representative body

Requirement to undertake due diligence

4.25 Many respondents supported a more thorough requirement for each entity in the supply chain to complete due diligence.

"HMRC should be targeting the promoters of DR schemes by requiring onshore engagers to do more due diligence on the party with whom they are contracting" Industry body

4.26 One recruitment trade body summarised the advice that provides to its members on completing due diligence. The measures include:

- Knowing how the intermediary pays the worker
- Checking for indicators of disguised remuneration use such as paying a large part of their wages without making the appropriate statutory deductions
- Avoiding any scheme that shows the involvement of, and payments being made to, multiple parties

Single enforcement body

4.27 A number of respondents expressed agreement with the creation of a Single Enforcement Body (SEB) to oversee the sector and take on the government regulatory function. The SEB would identify bad actors within the market, and act to provide protections for workers by ensuring they receive the employment rights they are due.

One respondent suggested that it was important for the SEB to have a data-sharing gateway with HMRC so that information about non-compliant umbrella companies could be shared effectively between government bodies in order to tackle all forms of non-compliance, particularly in the area of employment rights.

Banning umbrella companies

4.28 Some respondents, in particular workers and trade unions, argued that the most effective way to improve compliance with both tax and rights obligations would be the complete removal of umbrella companies from the labour supply chain. Some respondents argued that there is no benefit to the umbrella company model other than helping businesses to avoid the costs of employment.

4.29 Some respondents disagreed with the idea of banning umbrella companies, arguing that the market would simply adapt and develop new models of engagement.

“We would point out that if umbrellas were to be banned, the market itself will simply design a new model. It is broadly accepted that tax regulations have driven an expansion of this market and it equally accepted that there is a commercial need for specialist payment service providers. A simple ban would not obviate this need.” Umbrella company trade body

Government response

4.30 The government is grateful to respondents who shared their views and experiences of tax non-compliant behaviour in the umbrella company market, and their views on how this behaviour could be addressed. It was clear that respondents were also highly supportive of employment rights regulation of umbrella companies. The government will continue to focus on addressing both the tax and employment law non-compliant behaviour in the umbrella company market and will publish a consultation in the coming months proposing a range of options to tackle these issues.

4.31 The focus of this chapter of the Call for Evidence was on tax non-compliance and how this could be addressed. While most respondents did not have first-hand experience of the non-compliant behaviours that were described in the Call for Evidence, some had encountered what they believed to be non-compliant umbrella companies, that they discovered through processes they had put in place to assure themselves that the businesses with which they were dealing were compliant. Other respondents, however, indicated that they did not have robust processes like these in place and instead relied on third-party accreditation and the use of preferred supplier lists. The potential fallibility of such an approach was pointed out by some respondents.

There was some support for users and suppliers of temporary labour taking greater responsibility for compliance in their supply chains.

4.32 A potential solution could be that users and suppliers of temporary labour could bear more responsibility for the compliance of their labour supply chains, and that the current legal frameworks in the market do not provide motivation for these businesses to take this care. Therefore, noting the suggestions put forward by respondents, the government will consult on strategic options that it believes could address the tax non-compliance in the umbrella company market by changing behaviours. This consultation will invite views on whether these options could address the tax non-compliance issues in the market and any wider impacts that they would have, which will be used to inform policy design as well as a decision on which, if any, to take forward.

4.33 As well as including strategic options to address tax non-compliance, the consultation will invite views on a proposed approach to defining umbrella companies for the purposes of employment law regulation.

Chapter 5

Next Steps

5.1 The information provided by respondents to this Call for Evidence has been (and will continue to be) used to inform policy development in the umbrella company market. HMRC, HM Treasury and the Department for Business and Trade will continue to work together on options to address the behaviours in the market that are causing concern. A consultation paper has been published alongside this summary of responses. This will allow stakeholders the opportunity to comment on specific proposals to address both the employment rights issues and tax-non-compliance in the market.

List of Call for Evidence Respondents

Only organisations that provided written responses are listed. In addition to the responses from organisations, the government received 354 responses from individual workers.

Acacium Group

The Advisory, Conciliation and Arbitration Service

Alexander Mann Solutions

The Association of Professional Staffing Companies

Association of Labour Providers

Association of Recruitment Consultancies

British Airline Pilots' Association

Confederation of British Industry

The Chartered Institute of Taxation

Clarity Umbrella Ltd

Danbro

Deloitte

Employment Rights Assessment Services

E-Resourcing Ltd

Fair Umbrella Project

Freelancer and Contractor Services Association

The Federation of Small Businesses

Gangmasters and Labour Abuse Authority

Grant Thornton

Hays

The Institute of Chartered Accountants in England and Wales

The Association of Independent Professionals and the Self-Employed

iWork

Jobsaware

JSA Group (Workwell)

Low Incomes Tax Reform Group (with input & endorsement from TaxAid)

Loan Charge Action Group (LCAG)

Loan Charge and Taxpayer Fairness All-Party Parliamentary Group
Logistics Support Network Ltd
NASUWT – The Teachers’ Union
Office of the Director of Labour Market Enforcement
Optionis
Orca Pay Group
Osbourne Clarke LLP
Professional Passport
Quba Solutions
Ray Trew Accountancy
Recruitment & Employment Confederation
Reed
Seven Resourcing
Swan Health Contracts
The Contractor Co-Operative
The Law Place
Trade association of British Umbrella Companies
Trades Union Congress
Unite the Union
Volt International

List of Call for Evidence Questions

The Role of Umbrella Companies in the Labour Market

Question 1: Do you represent an employment business, or end-client?

Question 2: In which sector does your business operate, or what type of service does it provide?

Question 3: Roughly how many people does your organisation employ directly and operate PAYE for overall? [micro (0-9 employees), small (10-49), medium (50-249) and large (250+)]

Question 4: If you use umbrella companies, roughly how many people are employed via an umbrella company on behalf of your business each year?

Question 5: What factors do you take into account when deciding how to engage staff?

Question 6: If you use umbrella companies, why do you work with them?

Question 7: If you use umbrella companies, does working with them create any advantages? If so, what are they?

Question 8: Does working with umbrella companies create any disadvantages? If so, what are they?

Question 9: Have you noticed any change in the way umbrella companies market themselves and the benefits they offer over the last 5 years? What has changed?

Question 10: Have you considered working with other intermediaries, such as payroll bureaux?

- a. If yes, which other intermediaries?
- b. If yes, why did you decide not to work with them or why did you choose to work with an umbrella company over these other intermediaries?

Question 11: The government has heard concerns about supply chains for labour becoming longer. Do you have views on the benefits and drawbacks of longer supply chains and/or why businesses may find that useful?

Question 12: Do you encourage or require your work-seekers to work through an umbrella company?

- a. Why?
- b. What type of workers?

Question 13: Do you operate a preferred supplier list?

- a. If yes, how many do you use?
- b. If yes, how do you select these?
- c. If yes, why do you use a preferred supplier list?

Question 14: Do you do carry out due diligence on umbrella companies you work with/on your preferred supplier list? How?

Question 15: What proportion of umbrella companies that you work with are accredited by a third-party trade body and which trade body?

Question 16: Do you receive all the required information from the umbrella company to accurately complete the Key Information Document?

- a. Do you independently validate the information received from the umbrella company?

b. How?

Employment Rights Issues in the Umbrella Company Market

Question 17: Which sector do you work in? For example, hospitality, retail, or IT.

Question 18: How would you describe the main role(s) that you perform?

Question 19: How many umbrella companies are you employed by currently?

Question 20: How many different assignments have you worked while being employed by the same umbrella company?

Question 21: Approximately, what percentage of your annual income comes from roles performed while employed through an umbrella company?

Question 22: If you have been working for umbrella companies for more than a year, have you noticed any change in the way umbrella companies market themselves to workers and the benefits they offer? What has changed?

Question 23: Do you know which organisation is responsible for your pay, employment rights and employment status?

Question 24: Why do you work for/through an umbrella company?

Question 25: If you have chosen to work through an umbrella company rather than being paid directly by the employment business, why was this?

Question 26: How did you choose which umbrella company to work through?

Question 27: Are you issued with terms or a contract by the umbrella company?

Question 28: Do you receive a payslip from your umbrella company and, if so, do you understand the payslip?

Question 29: Do you have any other feedback on the experience of working through an umbrella company?

Question 30: Do you know who is responsible for issuing the Key Information Document to you?

Question 31: Are you, or have you been, issued with a Key Information Document when you sign up with an employment business for the first time?

Question 32: Are you, or have you been, re-issued with a Key Information Document when the information changes?

Question 33: Has receiving a Key Information Document helped you to better understand what you can expect to be paid, at what point and by whom?

Tax Non-Compliance in the Umbrella Company Market

Question 34: If you are an employment business or end client which uses umbrella company employees, do you take any steps to prevent umbrella companies which may engage in tax non-compliance from entering your labour supply chains? If so, what are they?

Question 35: How could employment businesses or end clients who use umbrella companies, do more to ensure tax compliance in their supply chain?

Question 36: Do you have experience of umbrella companies engaging in any related schemes or models to those covered above, or any other tax non-compliance not covered in this paper? If so, what are they?

Question 37: How could the government support or encourage employment businesses and end clients to do more to ensure tax compliance in their supply chain?

Question 38: What further steps, if any, do you think HMRC, and government should take to prevent or tackle non-complaint models outlined in this section?

Terminology

The following is an explanation of some of the terms that are used in this Summary of Responses.

A promoter of a mass-marketed tax avoidance scheme - generally someone who designs or markets the tax avoidance scheme or is responsible for its organisation. Promoters may use a network of enablers to sell their schemes.

Contract of employment – Contract of employment means a contract of service or apprenticeship, whether express or implied, and whether oral or in writing. Section 230 of the Employment Rights Act 1996 states that ‘employee’ means an individual who has entered into or works under a contract of employment.

Disguised remuneration (DR) – contrived arrangements that pay people amounts that are purported to be non-taxable in place of a salary. These amounts are often described as a loan, annuity, or other payment that is said to be non-taxable. These supposedly ‘non-taxable’ payments are no different to normal earnings and are, and always have been, taxable.

Employment agency - a business which finds permanent roles for work-seekers with an employer or supplies employers with work-seekers. For the precise definition, see the Employment Agencies Act 1973, section 13(2).

Employment business – a business which finds temporary or contract roles for work-seekers and supplies them to work for, and under the control of, the end client. The provision of work-finding services (defined in regulation 2 of the Conduct Regulations) is a distinguishing feature of an employment business. For the precise definition, see the Employment Agencies Act 1973, section 13(3). For tax purposes, such as the agency legislation, these are typically known just as agencies.

Employment intermediary – any person who makes arrangements for an individual to work for a third party or pay for work done for a third party. Employment businesses, employment agencies and umbrella companies are types of employment intermediary.

End client – the party who receives the services of the person supplied to carry out the work.

Key Information Document (KID) – the document which employment businesses must provide to work-seekers when they sign up with them and before any work-finding services can commence. It should set out pay-related information for the work-seeker.

Mini-umbrella company (MUC) – a small umbrella company, typically only employing a few workers, set up to commit tax fraud.

Personal Service Company (PSC) – a limited company through which a contractor provides their services. Typically, the contractor is a significant or the only shareholder.

Umbrella company – a business which employs a worker with a view to that worker being supplied to work for, and under the control of, the end-client. There is no statutory definition of an umbrella company for employment rights or tax purposes.

Umbrella company employee – a work-seeker who is employed by an umbrella company in order to complete work for an end client.

Worker – a person supplied to carry out work, typically used in this document to refer to someone seeking temporary work, often through an employment intermediary (sometimes also referred to as a contractor). Please note that this term does not refer in this context to the technical meaning of the employment status ‘worker’ or ‘limb (b) worker’ for the purpose of assigning employment rights as set out in section 230(3) of the Employment Rights Act 1996.

Work-seeker – for employment law purposes, this refers to the person to whom an employment agency or employment business provides (or holds itself out as capable of providing) work-finding services.

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This document can be downloaded from www.gov.uk

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