

# **FCSA Response to:**

## **BEIS consultation on measures to increase transparency in the UK labour market**

23 May 2018

## Contents

<u>Section</u>	<u>Page No.</u>
Executive Summary	3
Background to FCSA	4
Section A: Written Statements	6
Section B: Continuous Service	7
Section C: Holiday Pay	7
Section D: Right to Request	8
Section E: Information & Consultation of Employees Regulations	8
Conclusions	9
Contact Details	10
 Appendix: Summary of Recommendations	 11

## Executive Summary

FCSA supports Matthew Taylor's review of modern working practices which we contributed to during 2017, and we welcome the opportunity to respond to this consultation on measures to increase transparency in the UK labour market.

The most important point we raise in this consultation response is the need for any written statement initiative to be aligned with any "key facts" document to be introduced – which has been proposed in the BEIS consultation on agency worker recommendations. Should these initiatives be implemented, it is important that the requirements are combined meaning that just one document needs to be produced which will meet both criteria. Otherwise it would be unreasonable to expect engagers to produce two very similar documents, not to mention confusing for workers, and therefore will not meet the objective of improved transparency.

However we do not support introducing change without clear objectives, and the rationale behind broadening the use of written statements is not clear. Therefore, we support the consultation's aim to gather evidence and better understand the current use of written statements before implementing any change. One such issue is the timing of written statements which might fundamentally contradict the purpose of broadening their use.

Some of the issues raised within the consultation are slightly peripheral for FCSA members therefore we have not always given an opinion or recommendation where we believe other stakeholders are better qualified to do so. Implementing recommendations from Matthew Taylor's review gives policymakers an opportunity to make significant changes that will genuinely benefit the UK's workforce, and where we have specialist knowledge and experience we will play an active role in maximising this opportunity.

## Background to FCSA

The Freelancer& Contractor Services Association (FCSA) is the largest independent membership body for professional employment services, with members providing umbrella, self-employed, accountancy and business support solutions to the temporary workforce. At the time of writing the FCSA has 16 Accredited Members and 65 Associate Members who collectively represent over 130,000 professional contractors.

Set up in 2008, FCSA are industry leaders with credibility and a proven track record. Our purpose is to safeguard the long-term future of the professional freelance sector for the benefit of the UK economy, through:

- Setting and raising standards for service providers who support professional contractors
- Promoting compliance in order to protect professional contractors
- Influencing and lobbying to ensure that members' needs are represented to policymakers
- Collaborating through partnerships with likeminded organisations

FCSA's primary role is to raise standards and promote compliance, and through our accreditation we encourage self-regulation in our sector of supporting contractors to meet their tax and legal obligations.

### Our role in self-regulation

FCSA accreditation brings value to the supply chain, and our compliance testing is unique in the following ways:

1. It is truly independent
  - Our assessors are independent of FCSA so there are no conflicts of interest
  - Our assessors are professionally regulated accountants and solicitors
  - Our CEO is appointed by members and is independent, with no commercial conflicts of interest
2. Members must pass our testing annually in order to retain accredited status
3. We publish the compliance standards that we test against
4. We submit a copy of members' audits to HMRC
5. Our standard is recognised by all of the recruitment trade bodies including: APSCo, REC, TEAM

FCSA's code standards are the most stringent and comprehensive in the industry. It includes sections on: governance, corporate structure, employment law, accountancy/tax law, insurance and financial stability checks, relationship with recruitment businesses, relationships with contractors, umbrella employment operations, accountancy support operations, and self-employment operations. Importantly, no FCSA Accredited Member is allowed to operate Offshore Schemes, Loan Schemes, Trusts, Managed Services Companies Schemes, Pay-day-by-Pay models, or similar.

Any contractor, agency, or end-hirer choosing to work with an FCSA accredited member is assured that the member operates at the highest industry standards for the benefit and protection of the contractor/agency/end-hirer.

#### Change in membership structure

There are currently two types of FCSA member: Accredited who have been independently tested for compliance with our standards, and associate members who have not been tested for compliance as they join FCSA for our trade body activities. With effect from September 2018, the FCSA will no longer offer the associate category of membership and this will be withdrawn as of that date. FCSA membership is perceived to denote that firms have met the FCSA's standard of compliance via Accreditation and therefore we have a duty of care to ensure that this is the case.

Effectively our decision to withdraw the Associate category of membership will result in the FCSA offering a single category of membership – FCSA Accredited Member – and from September requires all of our members to demonstrate the same standard of compliance. Having one standard of membership aligns with our core objectives to raise standards and promote compliance, and will support agencies in making informed decisions regarding their preferred supplier lists. Associate members have had significant advance notice of the change, allowing time to become accredited should they wish to do so.

#### Working with government

In our role as the professional membership body for umbrellas, self-employed solution firms and specialist accountants that support contractors, we represent our members' views to government with the aim of advising on potential complexities of proposed changes and avoiding any unintended consequences. FCSA has worked closely with HMRC, HMT, OTS and BEIS (BIS) in recent years in providing evidence and contributions to their various policy initiatives that have impacted on the financial elements of self-employment. Numerous recent tax policy changes have penalised the contingent workforce and the businesses that support them, leaving them financially worse off and under-valued by a Government that says it recognises the economic importance of the flexible workforce. It would be wrong to further penalise the workers and the businesses that have been the financial backbone of the UK economy in recent years.

## Section A - Written Statements

The consultation document acknowledges the need to better understand the current use of written statements, and we are pleased that the consultation seeks to gather evidence in order to address this point. Without this preliminary step there is a danger of introducing change that is more onerous than current regulations around written statements.

Whilst we support the rationale behind the proposal for all workers to receive written information about their role, we believe it can be better achieved through the key facts document discussed in the recent BEIS Agency Worker Recommendations consultation. Their proposed key facts document gives all workers clarity regarding their role and accompanying rights on day 1, whereas the current legal obligations of "written statements" require that they are provided within 2 months of an individual commencing work. Clearly this timeframe could be an issue for temporary workers who might have already left a role before they receive a written statement, which we believe contradicts the intention of the proposal which is to bring about clarity.

We strongly recommend that any new "written statement" initiative for all workers must be aligned with any "key facts" document to be introduced – which has been proposed in the BEIS consultation on agency worker recommendations.

Should these initiatives be implemented, it is important that the requirements are combined meaning that just one document needs to be produced which will meet both criteria. Otherwise it would be unreasonable to expect engagers to produce two very similar documents, not to mention confusing for workers, and therefore will not meet the objective of improved transparency.

If two separate documents are required, the first of which on day 1 and subsequently within 2 months, there will be the following consequences:

- Engagers would be unreasonably burdened with producing two very similar documents
- Information would be duplicated within the two documents
- Workers would be more confused than they currently are, which defeats the objective
- Temporary workers might receive important documents after they have left their role

For further details of our recommendations regarding possible content and implantation of proposed "Key Facts" documents please refer to our response to "BEIS Consultation on Agency Worker Recommendations" submitted via email on 9 May 2018.

### Recommendations

1. Improve understanding of written statements and how they currently operate prior to bringing in any changes
2. If written statements are broadened to encompass all workers, it must be aligned to the "key facts" initiative proposed within the BEIS consultation on agency worker recommendations

## Section B - Continuous Service

We support the proposal to increase the consideration of a relevant break in service for the calculation of continuous service, and we agree that it should be more than one week. We believe this will have a beneficial impact on workers who might otherwise not qualify for certain employment rights such as protection from unfair dismissal. This change aligns with our objective of supporting contingent workers; FCSA Accredited Members employ such workers under an overarching contract of employment. This ensures that all such professional contractors choosing FCSA Accredited Members do already receive all statutory benefits and rights, including those that could otherwise be affected by a break in service. Such contractors who are employed by FCSA Accredited Members continue to be employed even when they are not working on an assignment for end-clients.

### Recommendation

3. Increase the "relevant break" consideration so that it is more than one week

## Section C - Holiday Pay

We support proposals to increase awareness of holiday pay entitlements, and we recommend that this can best be achieved through the proposed key facts document that was proposed within the BEIS consultation on agency worker recommendations. We are supportive of the proposal to increase the length of the holiday pay reference period from 12 to 52 weeks as we have not identified any detrimental consequences of doing so.

We also support the intention outlined in paragraphs 50 to 52 (inclusive) of the consultation document, to seek new ways in which atypical workers might receive their holiday pay. As already mentioned, contingent workers who are employed by FCSA Accredited Members by definition do receive their holiday entitlement, and in fact we test for this as part of the annual accreditation process for such members. Therefore we have been unable to identify any new or innovative approaches to the issue, however we would be receptive to considering any new proposals.

### Recommendations

4. Increase awareness of holiday pay entitlements through implementing the key facts initiative that was proposed within the BEIS consultation on agency worker recommendations
5. Increase the length of the holiday pay reference period from 12 to 52 weeks
6. Continue to seek new mechanisms by which contingent workers might receive their holiday pay



## Section D - Right to Request

FCSA Accredited Members that are umbrella employers do not operate zero hour contracts, instead we require them to properly employ workers so that they receive all accompanying statutory rights.

FCSA Accredited Members that are specialist accountancy firms who support self-employed professionals are properly engaged as accounting and tax advisors to that contractor. As professional advisors, the accountants would not become involved in any "right to request" discussions between their client (the contractor) and the contractor's end-hirer.

As such the "right to request" proposals are not relevant to FCSA members and therefore we have no comments or recommendations in relation to this section of the consultation document.

## Section E - Information & Consultation of Employees Regulations

FCSA members have not put forward any views on whether changes are needed in relation to the Information & Consultation of Employees Regulations, we therefore have no comments or recommendations in relation to this section. As a general point, by promoting best practice and raising standards in our sector, FCSA is already ensuring that a significant proportion of the UK workforce receive the rights to which they are entitled. Therefore we would expect FCSA Accredited Members to act accordingly in scenarios where these Information & Consultation of Employees Regulations are applicable.



## Conclusions

In this consultation response we have supported the need to gather evidence and better understand the use of written statements, prior to deciding whether broadening their use is appropriate. An alternative that we endorsed was proposed in the BEIS consultation on agency worker recommendations, that of introducing a key facts document for workers. The rationale behind this document is to bring transparency and give workers an improved understanding of their rights and benefits. This relates to the same objective of broadening the use of written statements, and as such implementing the key facts document seems to be an obvious conclusion in preference to amending employment legislation to fit a purpose for which it wasn't designed.

Furthermore, if it were a requirement for workers to receive a written statement in addition to a key facts document, there would be the following consequences:

- Engagers would be unreasonably burdened with producing two very similar documents
- Information would be duplicated within the two documents
- Workers would be more confused than they currently are, which defeats the objective
- Temporary workers might receive important documents after they have left their role

We also suggest that the key facts document would be an important tool in raising awareness of holiday pay entitlements, particularly as it would be given to workers on day 1. If workers did not receive such key information until 2 months later it would likely defeat the objective of raising awareness as many temporary workers will have changed role within that timeframe.

In summary, we want to work with policymakers in implementing recommendations from Taylor's review of modern working practices, and together we can ensure that a careful approach is taken that will achieve objectives without unintended consequences. We must not inhibit the growth of the UK economy by imposing restrictions on the creation of flexible non-permanent employment. Given the current uncertainties in relation to leaving the EU, a stable platform for growth and economic prosperity must be at the heart of the UK's employment strategy. There is universal recognition that workforce flexibility is a key competitive advantage to the UK, and is (rightly) here to stay.

## Contact details for further information

If you would like further information on any aspect of this response, please do not hesitate to contact:

**Freelancer & Contractor Services Association**

## APPENDIX: Summary of Recommendations

---

FCSA exists to raise standards and promote compliance, and through our accreditation we encourage self-regulation in our sector of supporting contractors to meet their tax and legal obligations. We make several recommendations in our response to this consultation, which we have listed here in the order in which they are discussed.

1. Improve understanding of written statements and how they currently operate prior to bringing in any changes
2. If written statements are broadened to encompass all workers, these must be aligned to the "key facts" initiative proposed within the BEIS consultation on agency worker recommendations
3. Increase the continuous service "relevant break" consideration so that it is more than one week
4. Increase awareness of holiday pay entitlements through implementing the key facts initiative that was proposed within the BEIS consultation on agency worker recommendations
5. Increase the length of the holiday pay reference period from 12 to 52 weeks
6. Continue to seek new mechanisms by which contingent workers might receive their holiday pay

