CIPD | HR-inform

Good Work: The Taylor Review of Modern Working Practices

Written evidence submitted by HR-Inform on the consultation on agency workers recommendations

Introduction

We are providing this response to the Department for Business, Energy and Industrial Strategy consultation on behalf of CIPD HR-inform. HR-inform is a subscription service providing employment law information and practical guidance to help organisations with every aspect of HR throughout the employment life cycle.

1. To what extent would you agree that a 'key facts' page would support work seekers in making decisions about work?

We 'strongly agree' that a 'key facts' page would support work seekers in making decisions about work. Decisions regarding work are often difficult decisions to make as they have the potential to impact on a large areas of the work seekers' life, from their finances to their personal home life. Whilst work decisions are made dependent on a number of factors relating both to the work and the individual, having a 'key facts' page which contains key information about potential work engagements will increase transparency and ensures the work seeker has greater clarity during the decision-making process. This will, in turn, allow the work seeker to make a more informed decision; they can then either accept or turn down work knowing that they have reached the correct decision for them based on key information which they would not otherwise have available to them.

1(a). If slightly or strongly agree, what key facts do you think should be made prominent?

The key facts which should be made prominent are those which are key to help the work seeker decide whether they wish to undertake the engagement or not. Although this requires a certain assumption to be made, in most cases information relating to pay and the entitlement to workplace benefits, whether financial or not, will weigh heavily on the mind of a work seeker when making decisions about work. Facts relating to pay should extend from who has responsibility for payment

to frequency of pay and whether any deductions will be made. This will help remedy any uncertainty the work seeker will have regarding their finances. Additionally, we believe that transparency over how the agency worker will be engaged can aid the work seeker to make an informed decision.

We would suggest, however, that care is taken to ensure the 'key facts' page remains limited to those facts which are key to aid a work seeker when making a decision about work. This will result in all facts being prominent within the document because they should all be 'key' to ensure the objective of the 'key facts' page is being achieved.

1(c). Thinking about work seekers and employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers	☑						
Employers in the recruitment sector			☑				

Please provide reasons for your answer below

We believe that providing work seekers with a 'key facts' page will have a significantly positive impact on individual work seekers. Making a decision about future work can be difficult for many individuals but especially where there is a lack

of clarity about how the work will affect important matters, such as pay or employment rights. As explained above in question 1, providing a 'key facts' page to work seekers will provide them with important information to allow an informed decision to be reached, allowing greater support to be given to the work seeker at this time.

As an additional administrative task, with all associated time and other costs, we understand that the provision of a 'key facts' page to all work seekers will have some negative impact on employers in the recruitment sector. There is, however, the scope for some positive impact to result from the provision of this page. Giving greater support and clarity to work seekers at the decision-making stage makes this business model more attractive to potential work seekers, as they become aware they will be provided with this support and transparency. It will also enhance the public perception and reputation of this business model, in turn leading to many more work seekers considering agency work as an attractive option for future flexible work options.

2. What information would be important to include in a "key facts" page?

To avoid confusion for the work seeker, it will be important to ensure the 'key facts' page does not simply repeat the written terms and conditions of employment. Not only will this create a repetitive requirement on the organisation, but it will also avoid the purpose of the provision of 'key facts' as those facts which are important to aid the decision-making process can be different to the normal terms and conditions.

We believe that the list of information contained within the consultation is sufficient to provide clarity for the work seeker, especially as this is definitive in relation to deductions which are made from pay which will help the work seeker understand how their take home pay has been calculated. To ensure further transparency regarding pay, often the biggest factor for any individual seeking work, we would suggest including information that relates to the frequency and method of pay

whilst undertaking the engagement. For work seekers with existing financial obligations and commitments, this additional information can be vital to their decision about work.

To ensure the same level of transparency is provided across all employment businesses who are required to produce the 'key facts' page, we would suggest a non-exhaustive list of key facts is introduced. This will provide each work seeker with the same support and clarity regardless of which employment business is used to seek work, as well as providing the employment business with certainty about the minimum amount of information to be included in the document. The employment business will then have the option of expanding on this list of key facts and should be encouraged to do so where they are aware of information which is likely to be relevant to the work seeker's decision-making process.

2(a). What conditions should be in place to ensure the 'key facts' page is provided and understood by the work seeker before any contractual engagement?

It is important that the 'key facts' page can be understood by all work seekers, regardless of their background, age, experience, nationality and so on, or the objective of producing the page will not be met. Full understanding may not be achieved in every circumstance, however, a condition that the 'key facts' page has to be produced in a clear format using plain English will go some way to ensuring most agency workers can read and understand the language used within the document. We would also suggest additional support and guidance is made available to work seekers who do not have English as their native language to provide them with tools to clarify any terms or facts contained in the document. The introduction of support and guidance will also help other work seekers who are perhaps less familiar with this type of document, if new to agency work, or what the information means for them individually.

There should also be a time condition relating to when the 'key facts' page is provided to the work seeker. The document is intended to improve transparency regarding the work seeker's decision about their future engagement, meaning that where the document is provided without sufficient time to consider the information contained within this that it will not meet the transparency purpose. How much time is sufficient to consider and understand the 'key facts' page will differ on an individual basis, and there may be circumstances where an engagement is starting within a short period of time. It is likely that a requirement to produce the document within a specific time period in advance of the engagement commencing, unless it is not reasonable to do so, will provide the work seeker with the necessary support to make their decision.

3. Should an employment business be required to ensure that the work seeker understand fully the information being given to them?

The purpose of producing a 'key facts' page is to provide the work seeker with sufficient information to make an informed decision about work. A failure to understand this information, whether completely or in part, will mean this purpose will not be met and the work seeker will not have sufficient clarity. In fact, a lack of understanding can lead to more uncertainty for the individual. To ensure best practice treatment and to meet the aim of this document, we would agree that employment businesses should be required to ensure the work seeker can fully understand the information that is given to them. We are aware, however, that this may be a particular onerous requirement to place on an employment business, especially where they seek work for a high number of individuals or they are obliged to prove understanding of an individual once a substantial period of time has passed.

3(a). If yes, how do you think this should be achieved?

There is the potential that employment businesses will find it difficult to ensure and prove a work seeker fully understands the information that is provided to them. One method to achieve this will be to ask the work seeker to sign and date the 'key facts' document as a way of declaring they have received, read and understand the document. This is the method which is applied to similar documents in different employment models and, as such, we suggest that there should not be more onerous requirements placed on employment businesses.

As mentioned previously, we would also suggest the introduction of advice and support for work seekers on 'key facts' pages, whether online or through the setting up of a dedicated helpline, to provide them with external support to aid their understanding. Specific advice and support is available for different employment models, for example, extensive advice is available for employees to understand their statement of main terms of employment, and we support the creation of similar support for agency workers.

4. Do you feel an hour is an accurate estimate of the time it would take to produce information document for a work seeker?

In most cases, an hour is likely to be an accurate estimate of the time it would take to produce a 'key facts' document. There will, however, be situations where this time estimate will be too high or too low in order to produce a sufficient information document which meets the transparency aim.

4(a). If too high or too low, please provide reasons for your answer.

One hour is likely to be too high an estimate where the employment business creates a template document for the 'key facts' page themselves, or if a standard template is produced for all employment businesses. Additionally, for employment businesses who produce these documents en masse or who become experienced at producing

these documents, the amount of time it will take to produce the document will proportionately reduce.

On the other hand, one hour is likely to be too low an estimate where there are factors which delay the production of the document, for example, where the process that needs to be followed to request the information from the third party is lengthy, if there are any disputes about the information contained within the document or where a change in the information requires an updated document to be produced, although it remains to be seen whether the employment business will be obliged to produce an updated version as the consultation does not touch on this point.

4(b). Other than the time taken by personnel to produce a "key facts" document, are there other business costs we should be aware of?

Alongside the time taken to produce the 'key facts' document, we believe that there will be other business costs.

4(c). If yes, please provide further details below:

Alongside the time costs of producing the document, the provision of a paper 'key facts' page will result in a financial cost. Although electronic documents and methods of distribution are often used, and is one option available to businesses to reduce this cost, we would suggest that care needs to be taken before assuming that all work seekers or workers have access to the required technology to access a 'key facts' page online.

We would also suggest that there may be other time costs to the business which do not solely arise in connection with the production of the 'key facts' page. For example, personnel time will be needed to distribute the document to individual work seekers, to collect any signed versions of the document, and to ensure personnel files are updated with each document. Consideration will also have to be given to the process for work seekers to raise queries or concerns regarding any information contained in the document. As there is no direct relationship between

the work seeker and the third party who provided the key information, it is likely that the employment business will have to field questions and ask the third party for answers to these. A significant amount of time may be required to do this, especially where the question is not adequately resolved in the first instance.

5. Have you used or are you currently using an umbrella/intermediary?

As an organisation, we do not use umbrella or intermediary companies within our supply chain. We do, however, provide guidance and advice for HR professionals and subscribers who currently use or have used umbrella or intermediary companies within their business.

5(a). If so, for what reason? e.g. as a work seeker or employment business for payroll purposes. What has your experience been?

This is not our area of expertise and so we do not feel qualified to comment.

6. Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary? Please provide reasons for your answer below.

From our experience of providing advice and guidance, we believe that a benefit for agency workers who continuously use an umbrella company or intermediary arises from certainty of their employment. This provides transparency within what can be a complex business model for an agency worker to understand. Problems can result, however, from uncertainty as to whom to raise employment concerns or queries too. Agency workers may often find themselves in a situation where they are receiving conflicting advice as to which party is responsible for working practices. This resulting lack of transparency can lead to the agency worker feeling insecure and unsupported in their professional life.

7. Should the extension of the remit of the Employment Agency Standards Inspectorate to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer; (please tick all relevant boxes).

	Yes	No	Don't know
i. Be limited to the regulation of the key facts page and provision of information relevant to those facts as part of a work offer by the hirer or employer?		☑	
ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework such as non-payment of wages, deductions from wages which the work seeker has not agreed too, and failure to provide written terms and conditions before the assignment starts?	☑		

Please provide reasons for your answer below

We support the extension of the remit of the Employment Agency Standards Inspectorate (EASI) in regards to umbrella companies to be aligned to the regulation already carried out. This will ensure there is uniformity across regulation within the agency work sector and will not lead to a two-tier approach for enforcement. A lack of uniformity would, in addition, potentially create situations where an agency worker is obliged to enter into a specific type of work arrangement due to the lower regulation by the state body. To ensure effective enforcement, however, the EASI will need sufficient resources and powers to allow adequate regulation across all different types of business models.

7(a). Thinking about work seekers and employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers	☑						
Employers in the recruitment sector			☑				

Please provide reasons for your answer below

Our answer to question 1(c) is directly applicable to the impact of umbrella companies providing work seekers with a 'key facts' page.

7(b). Thinking about work seekers and employers in the recruitment sector, would extending the regulations of the Employment Agency Standards Inspectorate to cover umbrella companies have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual	☑						

work seekers							
Employers in the recruitment sector			☑				

Please provide reasons for your answer below

Extending the remit of the Employment Agency Standards Inspectorate (EASI) to cover umbrella companies will have a significantly positive impact on individual work seekers. It provides security to these work seekers that they are seeking work through a regulated business model and they will be supported where unfair or unlawful practices are being carried out. State enforcement will also have a beneficial impact as it discourages bad practice and encourages greater compliance across the entire business model; resulting in an improvement in conditions for all work seekers.

Extending enforcement within any sector can have a negative impact on employers because it can discourage those employers who wish to use this business model, often through fears that they will be subjected to detrimental investigation processes or will have to go through burdensome processes to prove their compliance. Greater regulation within this business model, however, will have a positive impact on employers because it will contribute towards an improved reputation and perception of this model, helping to encourage greater use by business models. It will also help action to be taken against those employers who operate unlawfully, whilst avoiding detrimental action against those who act in accordance with the legislation and best practice.

8. Have you used or are you currently using a pay between assignments contract (PBA)?

We do not use, and have not used, pay between assignments (PBA) contracts within our business. We do, however, provide guidance to HR professionals and subscribers who currently use or have used PBA contracts.

9. In your experience what are the benefits and any problems associated with working on a PBA contract basis?

From our experience providing advice and guidance, there are many who choose to work on PBA contracts as they provide the individual with benefits that other contract models do not. An initial benefit is employment certainty, including by whom they are employed by, which provides the worker with clarity around enforcement of rights and removes any uncertainty regarding the raising of complaints or queries. Those on PBA contracts also benefit from entitlement to employment rights and the opportunity to build length of service to receive greater employment protections. Alongside employment certainty, clarity around pay and future pay even when not working is a benefit for agency workers on PBA contracts.

Due to a lack of awareness and guidance, problems can arise for those working on a PBA contracts where there is uncertainty about the practical impact of these contracts and what this means for those who work on these contracts in comparison to those who don't. For example, many queries or complaints can arise from those who are unaware as to what these contracts mean for their pay in comparison to their colleagues.

10. In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?

PBA contracts have, especially in recent times, received publicity as a method used to exploit agency workers and work seekers. Whilst there are organisations who use

these contracts incorrectly, PBA contracts do provide greater support for workers and work seekers who are between assignments. Providing certainty and security in relation to pay and employment even when the worker is between assignments is a positive impact for many who use these contracts. They create support for the work seeker to take a sufficient period of time between engagements to choose a work opportunity which works best for them, rather than having to accept the next available possibility because they need to resume earning.

Modern research has shown that insecure employment has a significant impact on individuals, whether this is on their finances or their health due to the worry and uncertainty about future work. PBA contracts provide effective support for workers and work seekers who are not working by providing security of employment and continuity of pay, removing this negative impact on the individual.

As well as supporting work seekers and workers at work, continuity of employment and pay are often requirements for many personal financial or contractual matters. PBA contracts ensure workers can enter into these arrangements, regardless of whether they are working or are between assignments. They also allow the worker to meet additional requirements relating to future earnings and continuity of earnings.

11. Do you have evidence that there are wider issues (beyond equal pay) with PBA contracts, for example agency workers not being able to access to facilities, rest breaks, annual leave or job vacancies?

As a result of our guidance and advice to those who use PBA contracts, we would suggest that the lack of clarity regarding the use and practical impact of these contracts is a wider issue. For example, there is currently a lack of awareness as to whether the use of a PBA contract affects the entitlement of other rights afforded to agency workers, other than pay. We are, however, unable to provide further evidence on this area.

11(a). Do you believe that the above issues would justify wider state enforcement?

We believe that the above issues justify wider state enforcement as there are concerns that the uncertainty around PBA contracts can lead to the exploitation of agency workers. Greater state enforcement will be an effective tool at punishing those who do breach existing laws, whilst discouraging others from doing so. Those businesses who operate lawfully and follow good practice will continue to be unaffected by wider state enforcement.

As well as wider state enforcement, we would suggest that the above issues justify the introduction of advice, guidance and supporting bodies for those who use and work under PBA contracts. Extensive guidance is provided by state bodies in other areas and we would support the creation of technical guidance by the state enforcement body. This guidance will be available to all, ensuring employment businesses understand the law but also allowing individuals to have greater awareness regarding their own rights.

12. To what extent do you agree that enforcement of the Agency Worker Regulations 2010 should come within the remit of the Employment Agency Standards Inspectorate?

We strongly agree that the enforcement of the Agency Worker Regulations 2010 ("AWR") should come within the remit of the Employment Agency Standards Inspectorate ("EASI"). Agency workers should not be placed in a position where the only enforcement of the AWR available to them is to pursue a claim through the employment tribunal themselves. An agency worker can feel they are placed in a more vulnerable position than 'normal' workers or employees and less able to challenge their working conditions due to the insecurity of their engagement. Additionally, although the employment tribunal system is now arguably available to all individuals following the removal of tribunal fees, this is still a difficult, challenging and often stressful recourse of action for any individual to undertake.

With this remaining the only enforcement action available against those who breach the AWR, the attractiveness of agency work for those who enjoy the flexibility of this work and choose to work under this particular model may be outweighed by the failure to enforce rights through processes other than placing this obligation on individuals themselves.

Enforcement action is likely to be useful at encouraging greater compliance and punishing those organisations who breach the AWR, whilst creating no risk for those organisations who apply the Regulations lawfully. More information, however, is needed on the method of enforcement to provide a detailed answer.

Conclusion

We believe that improving transparency and support will allow for a greater positive impact from all those who use the agency business model; from individual work seekers having clarity during the decision-making process to improving the reputation and perception of this important business model for many work seekers.

Alongside improved transparency, ensuring uniformity in, and increasing enforcement across, all business models within the agency sector will provide individuals with greater support. It prevents those who are seeking work or undertaking engagements from having to tackle unfair and unlawful practices themselves, whilst providing clarity and certainty of enforcement for all parties.