THE ASSOCIATION OF RECRUITMENT CONSULTANCIES

THE ARC COMMENTS IN RESPONSE TO– GOOD WORK (AGENCY WORKERS) CONSULTATION

MAY 2018

About ARC

The Association of Recruitment Consultancies (ARC) is a membership organisation for recruitment businesses. Our members are employers as well as providers of introduction and supply services to other employers and hirers.

ARC Response to Questions

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

We do not believe that the introduction of a general requirement to provide a 'key facts' page would have any significant impact in supporting work seekers in making informed decisions about work and would create an unnecessary burden on recruitment businesses. Recruitment businesses are already required to agree specific terms and supply detailed information to work seekers in accordance with Regs 14 and 15 of the Conduct Regulations and it is our view that this information already provides sufficient information in order for work seekers to make informed decisions about their work.

It is also noted that in the consultation in relation to Employment Status, there is a suggestion that it becomes a day one right, extended to workers, to receive a s1 statement of particulars of employment. Umbrella companies have this requirement as an employer.

If the extension and the key facts page requirement were to be adopted it would apply to most Agency Workers and this doubling up, the additional requirement for recruitment

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businesses to supply a key facts page in all cases, would create an unfair burden which would impede efficiency and increase cost.

We are therefore opposed to the provision of a key facts page overall. However we can see that such a page would be helpful **if the worker is not hired directly by the agency**. We recommend that if the hire is via a third party the party entering into the contract for services or contract of employment with the individual worker should provide a key facts page. Only the third party paying the worker would, for example, know what the gross rate received and deductions therefrom would apply in any particular case.

Also, as an idea for simplification, the key facts page in that case should serve as a s.1 statement if the third party is the employer, other aspects of the s.1 statement not envisaged to be included in the key facts page being provided within one week (this could easily for example be on standard format on a web page).

In the case of workers operating through personal service companies there should be no need for a key facts page at all.

In summary agencies that engage direct with the worker should not have to provide a key facts page. Where an individual works though an umbrella, the umbrella should provide the key facts

2) What information would be important to include in a 'key facts' page?

The confusion for a worker arises when it is not being paid by the agency. The third party will always be applying some deductions whether statutory or otherwise. The key facts page should capture the payment details including who the third party is, relationship with agency, relationship with worker, gross sum to be received from agency, all charges on that gross sum other than statutory payments, value of holiday pay, application of sick pay, application of any other deductions (for example other services that the umbrella offers such as insurance gateway which has a cost), pension provision, example net sum. Much of this information can be given at the time of registration, included in a standard document, but not all.

Note: who the worker is to work for is already covered by the Conduct Regulations.

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Liability for non-compliance should be against the third party not the agency as compliance will be wholly out of the agency's control.

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 difficult to see how a business can ensure that this is understood, or even received. There should be no greater obligation than a requirement that the work seeker signs to acknowledge that they have received and understood. However even this may be difficult for workers who do not have electronic access taking into account the fact that many temp requirement are filled very quickly with almost immediate start dates. There is a limit to what can be done!

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

This is asking too much! It would be impossible for an employment business to be able to demonstrate this, other than by requiring a signature to confirm. This would create a burden on recruitment business that would not apply to employers, who are not required to demonstrate that employees understand contracts of employment. Some employees complain they don't understand documents even when they have signed them! The general legal principle is that if you have signed it you are bound by it as you have agreed it.

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

No doubt a software solution would emerge but in the meantime the burden could well be significant, possibly greater on smaller businesses.

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

Most members use umbrella companies

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

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Ease of payroll and management of rights

6) Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?

Umbrellas are generally used so that candidates have a single point of payment, and can gain access to employee rights. Most Agencies do not solely use umbrellas but provide other options and generally candidates are given a choice. The Umbrella company provides a service to the candidate which the candidate pays for by way of deduction form the gross sum paid to the umbrella company by the agency. The Umbrella model is not generally used for the lowest paid workers as there has to be a minimum rate of pay (around £10 per hour) under which the model does not work.

Candidates are generally employed by Umbrellas, even though this is not a true employment relationship in the traditional sense, the umbrella company's own reason for existence normally only being the handling of payroll and tax arrangements and not the provision of any other service or product. Employees will generally have the right to a section 1 ERA statement of particulars.

We are aware of some instances where workers are not paid the correct amount by umbrella companies, including where the umbrella has ceased to trade. However this would be no different from the position of employers generally save only that the agency is likely to have paid the umbrella for the provision of the worker's services.

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:

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?

For the reasons given above there should be no requirement for a key facts page for agencies, only third parties

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ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative frameworks such as non-payment of wages, deductions from wages which the work seeker has not agreed to, and failure to provide written terms and conditions before the assignment starts? Please provide reasons for your response.

We do not believe that the remit of the EAS should be extended to cover regulation of umbrella companies. However there is a widespread belief that umbrella companies should be regulated in a similar way but that the expertise of the overseeing body should extend to tax and payroll matters and encompass a knowledge of recruitment supply for the following reasons.

The EAS was set up to monitor Employment Agencies and not umbrella companies who operate a completely different model. Umbrella companies do not provide work finding services and therefore do not act as Employment Agencies.

The appeal of umbrella companies is to enable payroll services only.

The fact that candidates are employed by umbrellas is a consequence of their provision of payroll services and is not a primary objective and they, unlike Employment Agencies, do not provide genuine work opportunities. Candidates often choose the umbrella they are employed by and sometimes agencies have little choice other than to deal with particular umbrellas.

The primary concern of Recruitment Businesses relate to exposure to tax risk and concerns that payments to candidates are made correctly, including payment of holiday pay and minimum wage. All of these areas are within the remit of the HMRC.

Whilst we consider that a designated inspectorate of umbrella companies could be useful this should be orientated towards tax and payment compliance, we do not believe that the EAS is the correct vehicle.

If the remit of the EAS was extended to umbrella companies this would imply that they had the same status as employment agencies, when this is not the case. Regulation 35 of the Conduct Regulations designates umbrella companies as work seekers.

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We therefore recommend a new regulatory body be created, but that this should not be allocated to the EAS which we suspect has little expertise in the payroll and tax arena.

7) (a) What do you think the impact of ensuring that umbrella companies provide work seekers with a key facts page would be on: i. the work seeker; and ii. the recruitment sector ?

Umbrellas will not welcome the additional requirement. However

(i) it would provide clarity for work-seekers who can then make an early decision whether to work with the umbrella; however this must be viewed against the fact that the agency if compliant with the Conduct regulations, will have provided information to the work-seeker as regards the job and headline rate

(ii) if the key facts page requirement applies to agencies the burden and cost on the sector will inevitably increase with 'doubling up' and increased non-compliance and in a fast moving commercial environment. If however it only applies to third parties, e.g. umbrella payroll providers, as we recommend there would be little impact.

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

It is understood that ARC members do not generally use these contracts

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

Pay during assignment is reduced to build up a reserve for payment in between assignments. However this is no different from the position any employer would find itself in, save for the fact that the AWR equal terms benefit is lost.

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?

At the time of the negotiation over PBA contracts a deal was struck between the CBI and the TUC and agency workers have access to equal pay earlier than they may otherwise have been. There is little evidence that the balance is any different from that envisaged at the

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outset. A removal of this option would result in agency workers losing key employment rights.

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 break, annual leave or job vacancies?

No

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

In principle we would have no objections to repeal of Swedish derogation. However, during the consultation period leading up to the passage of the AWR, the pay between assignments derogation, was seen as a concession that was given in return for accepting the 12 week period, many in the business community including the CBI believed that there should be a longer waiting period. There may also be issues regarding transitional arrangements if the Swedish derogation is repealed. There is also some concern that workers on pay between assignments contracts are willing to forsake AWR rights in return for the increased security that a pay between assignments contract offers. We would therefore suggest that if considering repeal, the Government, reconsider the 12 week waiting period to establish whether this is still appropriate and carry out further investigation to assess the impact on workers currently engaged on pay between assignments contracts.

In answer to the question, we do not see any need for wider state enforcement.

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?

There is a huge range of employment legislation that provides rights to employees and workers. In relation to nearly all these rights enforcement is left to the individual worker, in some instances with the assistance of trade unions and other voluntary organisations. Given that workers can access the services of ACAS and, with the abolition of Tribunal fees, can easily progress claims to the employment tribunal, we can see no reason why enforcement of AWR rights should be treated any differently.

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We would be concerned about the resources that would need to be used to extend this remit to the EAS. We would also be concerned at the burden on recruitment businesses that are likely to have to spend additional time and resources responding to requests made by the EAS.

It should be noted that in the many years since the AWR applied there have been very few reported issues or court cases, and there is no evidence of widespread abuse. Therefore there is no need for enforcement to be transferred to the EAS.

Questions about points made or to arrange any follow up meeting should be addressed to

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