Consultation Questions

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

From the Croner-I experience with clients, we only 'slightly agree' work seekers would be supported in making work decisions by the provision of a 'key facts' page. This page will certainly help the work seeker make an informed decision about future work based on information that is key to the particular engagement, provided there is an adequate period of time between the provision of the 'key facts' page and the commencement of the engagement.

A work seeker's decision on whether to undertake an engagement is likely to be affected by their personal circumstances or by their values and beliefs in the work they wish to undertake. This may mean that the information which is considered to be a key fact for the majority of work seekers may not actually provide the key piece of information for each individual work seeker. This is why we only 'slightly agree' the page will support work seekers in making work decisions because there are likely to be circumstances where the page does not provide information on all the important factors, or the key factor, for every work seeker.

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

A key fact for most workers will be the method of engagement. This helps clarify how they are engaged and to whom they need to direct questions about their engagement. Additionally, key facts which are commonly used to make work decisions will be those relating to finances, including rates of pay, methods of pay and deductions to be made from pay. Another prominent key fact should relate to the benefits on offer to the work seeker, whether financial or not, as this can incentivise them into making the decision and will indicate the culture of the third party.

Care should be taken, however, to ensure the 'key facts' page is limited to those facts regarding the work engagement which are actually "'key'. The document should avoid listing all facts about the engagement and highlighting a few as this detract from the objective of enhancing transparency for work seekers.

Introduction

This submission to the Department for Business, Energy and Industrial Strategy on its consultation on agency workers is made on behalf of Croner-i Ltd. Our organisation is a leader in knowledge and content for the HR, health and safety, accountancy and tax compliance sectors, providing specialist tools, advice and guidance for thousands of businesses. We have been passionate champions of professional management for over 70 years.

Executive Summary

Whilst there are understandable concerns about poor working practices within the agency sector, there is a danger in assuming that all agency workers are forced into a detrimental situation or are exploited. Agency work provides workers with the flexibility to work when they can, or when they need to. Employment businesses contribute towards the creation of work opportunities and create greater options for workers and work seekers.

Improving the transparency of information provided to work seekers will help combat the uncertainty that can arise from the complex business models that are often used within the agency sector. This information will provide greater certainty during the decision-making process and allow work seekers to arrive at an informed decision. At the same time, it will be necessary, however, to ensure there is not such an onerous obligation placed on the employment business that it discourages businesses from choosing the agency model.

When considering reforms to the enforcement of laws within the agency model it is essential to ensure that such enforcement is not achieved at the expense of businesses who operate within the law and provide positive and vital work for many workers and work seekers. We understand that there is a certain public negative perception of various business models within the agency sector and we believe that extending enforcement of state bodies will help improve the sector's reputation by allowing action to be taken against those who flout the relevant laws

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

Croner-I believes that the provision of a 'key facts' page will have a positive impact on individual work seekers. It will provide them with greater clarity on the terms of the engagement and how this operates. It will also give them additional information - which is not currently available- to help support their decision about future work engagements. We do, however, believe that this may have only a small positive impact across all work seekers because, as mentioned in question 1 above, the reasons why individual work seekers make particular decisions about work are often personal decisions, based on a wide range of factors. The 'key facts' page will only have a significantly positive impact where it contains all those acts which are pivotal factors in every individual's personal decision-making process about work.

We believe that the provision of a 'key facts' page will have some negative impact on employers in the recruitment business. It could create an additional administrative burden for them to complete before the engagements can commence. Croner-I does

believe, however, that the 'key facts' document will have some positive impact on employers within the recruitment business as it will create a more helpful and supportive culture within the agency business model. The provision of the document will contribute towards changing the perception and reputation of agency employers – a reputation, which can often be affected adversely by the public coverage of a small number of agency employers who breach good working practices. the document could make agency work more attractive to those who are seeking work and especially those who wish to undertake a flexible way of working.

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

The information outlined within the consultation is a minimum list of points to include in a 'key facts' page. Based on Croner-i's experience of providing information to clients regarding the recruitment process, we would suggest including payment information relating to the frequency and method of pay as this is often an important consideration for a work seeker before commencing a role.

Further, as mentioned already, we would suggest that care is taken to avoid the 'key facts' page simply being an extensive list of information or merely being a repetition of other documentation. To avoid this, and to ensure the key information is included as a minimum, we would suggest creating a non-exhaustive list of required information for all 'key facts' pages. The list can then be expanded by employment businesses where they believe this is appropriate or if, from experience, they discover a common query or piece of information that is used in the decision-making process by work seekers.

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?

To ensure the 'key facts' page is provided to work seekers, its issue can be subject to two important provisions: a deadline for provision; and a requirement to receive a written conformation from the work seeker that they have received the document.

The introduction of a deadline for employment businesses to provide the document - for example within a certain time period before the engagement commences - will encourage employment businesses to provide the 'key facts' page, especially if there

is a penalty introduced for a failure to meet this deadline. We would suggest any such penalty is reasonable and seeks to encourage compliance, rather than penalise the business. The specific deadline, should be sufficiently early to allow the work seeker to have an appropriate period of time to read and understand the document. Of course, this may not always be possible where turnover between engagements, or commencing a new engagement, is required within a short period. Therefore, it may be appropriate to allow an opt-out of the deadline in certain circumstances or, in special circumstances, allow employment businesses to meet this specific deadline where it is reasonable to do so.

To ensure the 'key facts' page can be understood by the work seeker, conditions can be put in place about the language of the document and a requirement to receive a declaration from the work seeker that they have read and understand the document.

Key facts relating to an engagement can involve technical or legalistic factors about employment law and pay. Whilst some work seekers will be comfortable reading a document that includes such technical or legalistic language, there will be many others who struggle to comprehend this information, especially where they have lower language skills or do not have English as their native language. A condition that requires the 'key facts' page to be produced and written in plain English will help ensure more work seekers can understand the information. For those who need additional language support, we would suggest the work seeker is given tools and resources to aid their own understanding - for example, online guidance can be used to provide helpful explanations.

Whether the 'key facts' page is provided to, and understood by, the work seeker can be difficult for an employment business to prove, especially if the requirement to evidence this arises after a significant period of time has passed. This is why we would suggest a condition that introduces a requirement to receive a declaration from the work seeker that they have received and understood the 'key facts' page is the simplest and most effective method of providing clear evidence of this. The declaration should be worded in plain English and explain to the work seeker what it is they are declaring. The work seeker can then sign and date the declaration to signify they have received, read and understood the 'key facts' page. Care will need to be taken,

however, to ensure that the declaration is freely given by the work seeker and not merely seen as a tick box exercise to allow them to start an engagement.

Croner-I believes that these conditions should not place onerous obligations on employment businesses. They should merely be a method of encouraging compliance and support for work seekers.

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

We believe that there should be a requirement on the employment business to ensure the work seeker can understand the information being provided to them. Even where the 'key facts' document is limited to information which is key and is written in plain language there is a danger that the employment business can simply assume the work seeker understands the information, although this may not always be the case.

A requirement to ensure the work seeker fully understands the information could be an onerous burden on an employment business. It may require the employment business to look beyond what the work seeker is communicating to them to question whether they do fully understand the information. How the employment business can prove they have met this requirement and have solid evidence the work seeker did fully understand the information at the time this was provided will need to be carefully considered.

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

Evidence that the work seeker understands the information can be achieved by seeking written confirmation from the work seeker that they fully understand the information. It should also be made clear, whether within the declaration or the 'key facts' page, that before signing this declaration the work seeker should ask questions or seek further guidance if they do not understand any information within the document.

This will mean providing the work seeker with supporting guidance and advice that they can access personally. This will, in turn, reduce what could be seen as quite a significant burden on the employment business.

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, we believe that employment businesses will require an hour to produce a 'key facts' document for a work seeker. There will, however, be factors which mean this time estimate is too high or too low for some employment businesses.

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

There are a number of different factors which will affect the amount of time it will take for an employment business to produce an information document: the size of the employment business and the resources available to carry out this additional administrative task. Additionally, whether the employment business provides engagement for a high number of work seekers and whether these are engaged to one or many third parties will also affect the time taken to produce the document. On the other hand, as with any administrative task, a higher frequency of producing these documents will lead to greater experience and efficiency for those who carry out this duty.

As well as internal factors, there may well be external factors which mean the time estimate of one hour to produce this document is too low. This is likely to the case where the employment business is requesting key facts from a third party and they unreasonably delay providing these. Alternatively, whether there are disputes around the information or an update is needed to any saved resources will also impact on the time spent. The consultation is silent on whether there will be a requirement on employment businesses to update the 'key facts' page where the information is amended or updated between the page being provided to the work seeker and the commencement of the engagement.

For those employment businesses who procure a high number of engagements for work seekers, the time spent on producing a 'key facts' page can be controlled by the production of a standard template document, along with guidance on the use of this. Although other factors may continue to extend the time taken, a standard document will help to create consistency across employment businesses.

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 a 'key facts' document, Croner-i believes that the production of this document will result in other business costs to the employment business.

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

Producing the 'key facts' document will, understandably, take time and resource. There are likely to be, however, additional administrative requirements on the employment business in relation to the document once it has been produced which, in turn, will create further time costs for the business. Any requirement to update information or amend inaccurate information will also require personnel time.

At the time the 'key facts' page is provided to the work seeker, there will be no direct relationship between the work seeker and the third party. As a result, any queries or concerns the work seeker has regarding the information are likely to be raised with the employment business. Where the employment business is not in a position to answer this query or verify the accuracy of the information, they may need to raise a question with the third party themselves. Once the question is answered, they will then be required to revert back to the work seeker. Acting as an intermediary between the work seeker and the third party can require a significant amount of time, especially where concerns are not resolved or the answer provided to the work seeker does not fully settle the matter initially.

Additionally, once the document is produced, a requirement on the employment business to receive a signed and dated copy of the 'key facts' page will require administrative time. In order to meet this requirement, the employment business may have to send repeated reminders or chase work seekers who fail to send them a copy. Also, the relevant personnel will need to spend time ensuring that they accurately record and file the signed document once it has been received.

Alongside time costs, the production of additional documents each time an engagement is considered is likely to place a financial cost on the employment business - especially if two copies are produced to enable the work seeker to return a signed version to be placed on record. The obvious way to combat the cost of

producing paper documents is to provide the 'key facts' page electronically, provided all work seekers can access electronic versions of the document. It can be easy in the modern age to assume all individuals have computer and Internet access. This may not always be the case.

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

Croner-I does not use umbrella or intermediary companies We do, however, provide advice and guidance to clients whose business models currently use, or have used, umbrella or intermediary 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?

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 content to clients who use or have used an umbrella company or intermediary, we are aware that the main benefit for agency workers is the certainty of their employment (including by whom they are employed by), when they are a direct employee of the umbrella company. There is also likely to be more clarity in relation to the continuity of their payment, their level of pay and the deductions which are made from this where they continue to be paid by the same umbrella company. In our experience there may be problems as to the certainty of contractual relationships and thus against whom they can enforce rights or raise questions. In some situations, the agency worker can be wrongly advised that they need to approach the other party. This can lead to the individual feeling unsupported and with no avenue to seek clarity or to receive their correct rights. A lack of transparency in the working mode, therefore, can have a significant impact on the security of the agency worker.

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

It is important that we repeat that it should not be assumed that all work seekers who are engaged using umbrella companies or intermediaries are either required to do so or are being exploited. There are many work seekers who voluntarily choose to work on this business model and any enforcement action should not discourage those who lawfully and fairly use these models because this is their preferred choice.

We do, however, agree that the remit of the Employment Agency Standards Inspectorate (EASI) to cover the regulation of umbrella companies and intermediaries in the supply of work seekers to a hirer should be aligned to the regulation of the types of employment rights already regulated by the EASI within other agency models. There should be no disparity within the regulatory remit of the EASI. Uniformity in the remit of the EASI will also create clarity across all business models for both work seekers

and those who operate businesses, leading to greater understanding of the powers and regulation carried out by the inspectorate.

Consideration will have to be given to whether the EASI has sufficient resources to carry out such uniform regulation that is extended to umbrella companies and intermediaries, especially as the numbers of the types of these businesses operating within the UK is currently uncertain. Where resources are insufficient, or are limited, it may be more effective for the remit of the EASI to be limited to the regulation of the information documents provided to work seekers. It can then focus their powers and resources on one area, rather than being insufficiently spread over a higher number of areas.

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

Croner-I believes that the explanations provided in the answer to question 1(c) are equally applicable to the provision of a 'key facts' page by an umbrella company.

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

Croner-I believes that 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 will provide them with certainty that they are using a business model which is regulated by a state enforcement body. Individual work seekers will feel more supported and encouraged to use arrangements which do not require them to personally act against unfair or unlawful practices. Once enforcement action is carried out, this will encourage greater compliance and fairer practices from other businesses and help to improve the conditions for work seekers.

We believe extending the remit of the EASI to cover umbrella companies will have some positive impact on employers in the recruitment sector as it will help improve the reputation of these business models and, in turn encouraging the use of these by work seekers. Additionally, this extension will not any impact on those umbrella companies who operate lawfully and in accordance with current rules and regulations. On the

other hand, we do believe that extending the remit of the EASI may have some negative impact on employers in the recruitment sector: it may discourage those who wish to use these business models. The method and forms of enforcement will need to be clarified before a precise indication of how this will affect employers in the recruitment sector can be known.

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

Croner-I does not use pay between assignments (PBA) contracts within our business. We do, however, provide advice and guidance to clients whose business models 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?

As mentioned previously in relation to the use of umbrella companies or intermediaries, care should be taken to ensure that an assumption is not drawn regarding the enforced use of PBA contracts.

In our experience, there are benefits for work seekers working on a PBA contract basis. These contracts are many work seekers' preferred method of agency work. The obvious benefit for many is the security of pay and continuance of earnings, regardless of whether the agency worker is currently undertaking an engagement or is between assignments. For many, the security of being employed with one employer provides the benefit of job security and removes any uncertainty concerning the employment model or from whom they are eligible to receive rights f. - such as the protection from unfair dismissal.

Experience gained from dealing with clients who use, or have used, PBA contracts, show that the main problem associated with these contracts is the lack of clarity and understanding regarding their function and the resulting consequences of their use. For example, agency workers who enter into conversations with colleagues regarding their pay rates may not be aware of the consequences of a PBA contract on their level of pay. They may simply believe they are being unfairly treated in comparison to others.

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?

We encourage our clients care to be to exercise taken before assuming that PBA contracts do not provide effective support for workers and work seekers who are not working. As mentioned previously, we believe that categorising all agency workers on PBA contracts as exploited creates a danger that the lawful use of these by many employment businesses is ignored.

PBA contracts are effective in providing support for workers and work seekers between assignments – they have greater financial and job security. Research shows that insecure employment has a negative impact on health, including an increase in stress and anxiety. PBA contracts will help to lessen the negative health impact as they provide security of employment between assignments.

Current and future financial security is a key matter for most working individuals. PBA contracts are financially supportive because they provide the worker and work seeker with a continued level of pay regardless of whether they are working or not.

Employment and financial security is often a condition that is placed on contractual arrangements for individuals, for example, loan applications, credit applications or tenancy agreements. Whilst on an insecure contract or between assignments, a worker or work seeker may be unable to meet this necessary condition and may be prevented from entering into financial contracts that are often a necessary part of modern day life. A PBA contract will support the worker or work seeker with this as they have the necessary security even when they are not in work.

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?

Our experience is limited to providing advice and guidance to clients who use PBA contracts within their business model. As mentioned previously, we believe a wider issue with PBA contracts is the lack of awareness and clarity on the practical issues of these contracts. Alongside this, there is a general misunderstanding of how PBA

contracts affect other agency worker rights. We are unable to provide further comment on this area.

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

Wider state enforcement is justified by those who use PBA contracts in breach of existing legislation. In turn, this will discourage the unlawful and unfair use of these contracts. The method of wider state enforcement will have to be carefully considered to ensure there is no negative impact on those employment businesses who rely on PBA contracts as part of their business model and, in practice, lawfully employ agency workers on these contracts.

From our experience, the above issues justify greater support, guidance and help to be introduced alongside wider state enforcement. Employment businesses, and work seekers, should have resources available to them to aid their understanding of these contracts as this will, in turn, encourage and support the lawful application of current rules. Extensive guidance is produced by other state enforcement bodies operating in different areas - for example, HM Revenue and Customs provide definitive technical guidance which can be accessed by all. We would encourage similar technical guidance to be created and published alongside any introduction of 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?

We strongly agree that the remit of the Employment Agency Standards Inspectorate (EASI) should be extended to cover the enforcement of the Agency Worker Regulations 2010 (AWR). Although agency workers have recourse to the employment tribunal system to bring a complaint, enforcement on employment rights should not be left to the individual alone, especially as they are often the weaker and more vulnerable party to the arrangement. Further information will be needed to review how enforcement by the EASI will work alongside the right for an agency worker to raise a tribunal claim in relation to their agency rights.

What remains to be seen is how enforcement will be carried out by the EASI, including whether this will mirror enforcement by other state bodies such as HM Revenue and Customs. Care will need to be taken to ensure methods of enforcement do not discourage businesses from using the agency model, especially as many businesses lawfully apply agency worker rights whilst using this model for economic and financial reasons. For example, the use of a 'naming and shaming' scheme is widely seen as an effective way of encouraging lawful practices to avoid the risk of reputational damage. The introduction of a 'naming and shaming' regime for those who breach the AWR will encourage compliance with the Regulations

Conclusion

Croner-I believes that the introduction of greater support for work seekers and extending state enforcement to different business models within the agency sector are positive measures. However, as repeatedly emphasised in this response, it is important not to make assumptions about the sector as a whole when considering available methods to improve transparency and enforcement.

We support the introduction of greater transparency for work seekers through the introduction of a 'key facts' information page, although care needs to be taken to ensure this page does not create onerous administrative and cost burdens on employment businesses.

Another method of increasing transparency which we have advocated throughout this response is an improvement to the guidance, information and support available to agency workers, work seekers and employment businesses who use this business model. Whilst reducing the burden placed on employment businesses, this will aid individuals within the sector to improve their own understanding and clarity of their treatment. A further consequence of providing this information will be that it may empower agency workers and work seekers to take enforcement action themselves against the employment business as they are able to ascertain whether they have been subjected to unlawful or unfair treatment.

Whilst the consultation is silent on methods of enforcement, we believe that extending state enforcement to different business models within the agency sector will have a positive impact on all as it will discourage and penalise those who operate unlawfully,

whilst having no or only a negligible impact on those businesses who comply with the law.

Croner-I is grateful for the opportunity to take part in this consultation and would be happy to be involved in further discussions on this matter if we could be of any further assistance.