Good Work: The Taylor Review of Modern Working Practices: Consultation on Agency Worker Recommendations

Acas Council Response

1. Acas (Advisory, Conciliation and Arbitration Service) welcomes the opportunity to respond to the Government's consultation on agency workers.

2. Acas is a statutory, non-departmental public body with a duty to improve employment relations in Great Britain. Acas has considerable practical experience of the dynamics of the workplace and of the issues experienced by both individuals and employers in the wide range of working arrangements in the modern labour market. In 2016/17 Acas handled almost 900,000 calls from individuals and employers to its national helpline and dealt with over 500,000 queries online. It provided conciliation in 744 collective disputes, received 92,000 notifications to its early conciliation service, and its network of locally based advisers trained nearly 37,000 individuals on a wide range of workplace-related topics.

3. This response draws on insights from Acas' practical experience and relevant Acas research. In particular, it draws on evidence and analysis previously set out in Acas' submission to the Taylor Review[1] as well as:
   - an Acas research paper: 'The effects of the Agency Worker Regulations on agency and employer practice',
   - two Acas policy discussion papers: 'The Agency Workers Directive: a permanent solution to temporary work?'; and 'Three sides to every story: the impact of the Agency Worker Regulations'. The latter based on an analysis of approximately 70 calls to the Acas helpline during Feb 2014 and Nov 2014, and
   - recent evidence from an analysis of helpline calls in 2017 which informed Acas' submission to the Taylor Review.

4. Acas does not seek to offer an opinion on those issues beyond its practical experience, therefore not all themes and questions within the scope of the consultation are addressed in this response.

Section 1: Improving the transparency of information provided to work seekers

5. The issues of particular relevance to Acas' experience and research in this area concern the need for clarity, transparency and understanding in contractual arrangements between all parties in all types of employment relationship. The Acas submission to the Taylor Review made the following points (which relate specifically to Section 1, Question 1; and Section 3, Question 9):

[1] http://www.acas.org.uk/media/pdf/h/s/Acas-submission-to-the-Taylor-Review.pdf

- a significant proportion of *all* calls to the Acas helpline involve queries from individuals and employers who are unsure about the **details of their contract** and applicable rights and obligations
- **confusion and uncertainty** about contracts in general is commonly a result of people:
    - not being issued with a written contract at all
    - not having read their contract or fully understood it
    - taking the view that a contract is a rather abstract concept until a problem arises – in other words, it is not seen as being relevant to getting on with their day-to-day work.

6. In addition to these general issues, Acas' experience and research suggests that agency workers can face a range of further difficulties when it comes to clarity and understanding of their contracts. For example, Acas' evidence finds that agency workers often have very little understanding of the **nuances of the Agency Workers Regulations**, and therefore what different contractual options mean for them in terms of benefits and risks – particularly with regards to the 'Payment Between Assignments' contracts. Research carried out for Acas by Leeds University in 2013 shows that the 'Swedish Derogation' was being encouraged by client firms but agencies were also supportive. This push-pull scenario was based upon the need to cut costs and the report concludes that the arrangement was particularly attractive "under high-volume, long-term supply conditions" where the issue of "having to provide pay between assignments is least likely to arise". The report noted that, according to interviewees, this was being used in sectors such as warehousing and industrial and assembly-line work.

7. This evidence – reflecting Acas' knowledge of contracts generally and those specifically relating to agency workers – strongly suggests that clear and easily accessible information and guidance has a role to play in helping to improve awareness of the potential risks and benefits involved in different types of contractual arrangements. The greater the depth of understanding and the sooner this is communicated, the greater the benefit to both:
    - *individuals*: enabling more people to enter into non-standard working arrangements in full knowledge of their position, including an awareness of the inherent uncertainty that comes with the flexibility in their contract
    - *employers*: providing a better basis for drafting contracts; encouraging early conversations with individuals about their terms and conditions before starting work; and emphasising importance of getting the basics right in terms of mutual agreement on terms of employment, its relationship with trust building, commitment and associated productivity and wellbeing.

8. Acas, BEIS, trade unions and other stakeholders have all played an important role in recent years in improving the availability and quality of guidance on these types of contracts for individuals and employers. However this remains an area where more work could be done. Acas has recently published revised guidance

on agency working, and will continue to review its guidance in this area and consider how this might be improved for the benefit of all parties in agency arrangements.

Key Facts Page

9. In terms of specific questions raised in Section 1 of the consultation, Acas' views are as follows:

- **'Key facts page' for agency workers (Section 1, Question 1)**

  Increasing the clarity of information provided to agency workers, and ensuring this information is understood, chimes with Acas' views as set out above. A key facts page would allow agency workers to make a more informed choice at the very start of any potential employment relationship. Acas made this point very clearly in its response to the Taylor Review.

- **Content and understanding of a key facts page (Section 1, Questions 2 & 3)**
  The enhanced information recommended in the Taylor Review may help with further clarity around more complex contractual arrangements relating to agency workers. Reaffirming the current legal position in a standardised manner would offer welcome consistency for agency workers. A recent analysis showed that the Acas helpline received 10,754 calls in 2017 about agency workers and 3,150 concerned pay issues. Acas would certainly wish to help with the dissemination of any such information and to ensure that businesses take steps to check that workers understand the information being given to them. As the government consultation suggests, it would be helpful to include information on:

  - **Pay**: who pays the agency worker, how much they will be paid
  - **Fees and deductions**: details of any fees or deductions which apply
  - **Additional benefits**: information on things such as childcare vouchers or group insurance schemes
  - **PBA**: information explaining the 'Swedish Derogation', if it will be used.

- **Time and costs associated with the key facts page (Section 1, Question 4)**
  The completion of a key facts page would not seem particularly onerous or burdensome in itself – for example, Acas has a range of easy to use tools and templates for employers covering issues such as writing job descriptions and issuing written statements. These are freely available on the Acas website at: http://www.acas.org.uk/index.aspx?articleid=1392.

Section 2: Extending the remit of the Employment Agency Standards inspectorate

10. Acas research and practical experience of the use of umbrella companies is limited. However, there is some evidence from analysis of calls to our helpline, along with anecdotal feedback from Acas advisers, that strongly suggests that the use of umbrella companies and intermediaries can provide greater

opportunity for confusion around employment rights and uncertainty about effective means of redress. The government's 'direction of travel' indicated in the consultation document is towards a 'standardisation' of rights and access to information (via a key facts page). One option is to extend the remit of the Employment Agency Standards Inspectorate, as suggested in the consultation, to include regulation of umbrella companies and intermediaries in respect of the key facts page (Question 7(i)). Acas believes that this would be an issue worth exploring by the Government, including the resource implications, in greater depth.

Section 3: Pay Between Assignments

11. In terms of specific questions raised in Section 3 of the consultation, Acas' views are as follows:

- **Benefits and problems associated with PBA contracts (Section 3, Question 9)**
  Evidence from the Acas helpline suggests that many agency workers are unclear about the details of their contractual status. Academic research commissioned by Acas has also shown that some agency workers had been presented by their agency with a list of the benefits of a PBA contract (including employee status) but not the risks – for example, that they may be utilised on a long-term, continuous basis within a single client firm but lose equal treatment rights with comparable workers in that firm; or specifications around the work they may need to accept to secure entitlement to pay between assignments, which in some cases involved travelling to distant locations. Our research also picked up that some sectors are using a 'split contract' approach to contracts, with PBA being used for a core of temporary staff employed on a long-term basis (and therefore never likely to be paid between assignments); and more 'contract for service' arrangements for short term staff who are never likely to accrue 12 weeks service. The Acas research highlighted the "imbalance of power in the agency-client-worker relationship".

- **The stated aims of the Agency Worker Regulations are to ensure "protection of agency workers" through the "application of the provision of equal treatment provisions" (Section 3, Question 12)**
  Acas believes that enforcement of the Agency Worker Regulations 2010 should come within the remit of the Employment Agency Standards inspectorate.

Acas
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