Agency worker consultation: Citizens Advice response

citizens advice

About us

Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. We are the membership body for local Citizens Advice services in England and Wales. There are around 300 local Citizens Advice services in England and Wales giving advice from 2,700 locations including high street offices, libraries, courts, prisons, GP's surgeries and hospitals.

We helped 2.7 million people face to face, over the phone, by email and webchat in 2016-17. There were also 43 million visits to our online advice pages. The real-time data we receive from our clients helps us identify emerging issues, understand what is causing them and make recommendations on how to fix the problems.

Over the past year we have helped more than 160,000 people with issues relating to employment. Millions more have accessed our employment advice online. We therefore have a detailed understanding of how the labour market is changing and the implications this has for the lives of workers.

Recommendation 1

Government should amend the legislation to improve the transparency of information which must be provided to work seekers both in terms of rates of pay and those responsible for paying them

Across different types of employment contract, Citizens Advice sees the impact of a lack of transparency and information on workers. Greater transparency for workers will have 3 main benefits:

- It will help workers choose the best job for them,
- It will make it easier for people to enforce their rights
- It will act as an incentive on employers to provide fair terms and conditions to workers

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

We agree with the aims of the recommendation that work seekers should have enough information to understand who is paying them and what deductions are being made.

Recent changes to regulations mean that workers as well as employees will, from April 2019, be entitled to payslips. For both, pay statements will be required to state the number of hours worked where wages are paid at an hourly rate. The requirement on agencies to provide certain facts to work seekers should be extended to the information provided in pay slips. For most workers, their payslip is the ongoing formal communication they receive from their employer.

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

We agree with the key facts listed in paragraphs 13 and 14.

We think the requirements could go further in places. In particular, as well as the requirement to provide information about what statutory deductions will be made, employers should be required to provide details of their deductions policy more generally so workers have a clear idea of how future deductions might be made.

To ensure the key facts page is effective in driving up standards of transparency, 2 additional requirements should be added. First, the key facts page should include information on how a worker should seek redress if they think their terms and conditions aren't being met.

Second, contracting employers should be entitled to request copies of their key facts documents to ensure the agencies they contract with are complying with the requirements. Large employers should be required to conduct that due diligence, to make sure the agencies they use are complying with all regulations.

As well as the key facts page, employers should be required to provide certain information on payslips - without that requirment, key facts will be general and their application will be flexible - not giving workers the clarity they need.

As a minimum, employers should be required to provide all workers with written payslips that include itemised hourly rates where it varies and itemised deductions. They should be presented in a way that they could be reasonably understood by a third party.

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?

The only way to make sure these - and any other - conditions are met is to make sure they are enforceable and enforced. How this requirement should be enforced is dealt with below.

In addition, contracting employers could be a key lever to make sure the key facts page is provided. Large employers should be required to conduct due diligence on the agencies they use to make sure they comply with regulations.

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

There is no way for employment businesses to make sure people understand the key facts of their employment. One approach would be to conduct consumer testing on the best presentation of key facts. This should build on the learnings of regulators who regularly test the impact of information requirements.

Recommendation 2

The Director of Labour Market Enforcement should consider whether the remit of EAS ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain

The number 1 problem with labour market regulation is the complexity of enforcement processes. Our survey of people who have experienced some form of unfair treatment in their workplace found that almost half (45%) didn't try to enforce their rights. Of these, a third (32%) didn't take action because they believed that it would be too difficult.

The best way to resolve that problem would be to create a single dedicated organisation - the Fair Work Authority. This would bring together the specialisms and responsibilities of existing bodies, which are currently often under-resourced and fragmented.

As a minimum, workers should be entitled to the same level of enforcement no matter how they enter into a work contract.

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

Citizens Advice sees the impact of the problems caused by umbrella companies. A common issue, as identified above, is a lack of clarity. Many workers aren't aware they are employed by a payroll or umbrella company. That causes particular problems if people have issues at work - making it more difficult for them to enforce their rights.

The most common problem encountered by Citizens Advice in regard to umbrella companies is unreasonable terms in contracts. Currently there is no general bar on 'unreasonable terms' - with the exception of where it deprives a worker of statutory rights in which case it is void.

A common manifestation of unreasonable terms is where a worker is promised a high hourly rate at recruitment. The worker is then required to enter into an employment relationship with an umbrella company which applies charges and deductions to wages. These charges include 'admin fees' and charging workers an amount for employer's NI contributions. These fees will have been agreed

contractually but a worker has no choice about whether to take up employment with the umbrella company.

Such deductions are lawful, as long as they don't reduce the wage below the NMW level.

Case study: Julie

Julie signed up with an agency when she saw an ad offering jobs as IT support workers for £18 an hour. At the interview she was told that the agency would put her forward to its clients, but that she'd be employed by a "payroll company" which would pay her.

After working for 3 weeks she received her first pay and payslip; her take home pay was a lot less than she'd been expecting, and there were items on her payslip that she didn't understand.

There was a deduction of £60 per week for 'admin charges' and as well as expected deductions for tax and her national insurance contributions, there was a deduction for 'employer NI contribs'. She didn't understand why she was paying for employer NI contributions as well as her own, and sought advice from a local Citizens Advice service, as the deductions seemed unfair to her.

Julie was advised that under her contract with the payroll company, these deductions were lawful - there's no legislation that addresses what seem like 'unfair' terms in contracts of employment. Provided that the terms in question don't deprive her of a minimum statutory entitlement, parties to an employment contract are free to agree to any term, however 'unreasonable' it appears.

In reality though, the worker is faced with the choice of accepting whatever terms are offered or not being offered work. The payroll company and the agency were able to advertise work at a headline rate which was misleading, and make deductions from Julie's wages provided that, after the deductions, her hourly rate was not less than the applicable National Minimum Wage rate - as was the case here. Charges for payroll admin, and for the agency or payroll company to cover its employer's NI liability are described in the NMW Regulations 2015 as payments or deductions which are 'for the employer's own use and benefit' and have the effect of reducing notional gross pay for the purposes of calculating whether NMW is being paid; here, because the 'headline' rate of pay is well in excess of NMW, the deductions do not lead to underpayment of NMW.

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?
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 to, and failure to provide written terms and conditions before the assignment starts? Please provide reasons for your response.

We believe the EAS inspectorate should be given the power to regulate umbrella companies and intermediaries. Workers often have little choice about whether to contract with an umbrella company - that decision should not exclude them from the protection of enforcement provided to other workers.

The EAS inspectorate's powers should cover the same types of employment rights they already regulate for other workers. That would give clarity and certainty to workers that no matter who their employer was they would benefit from active enforcement of their rights and would have the same pathways to redress.

The alternative would be to further complicate an already incredibly complex system of enforcement which workers struggle to interpret or navigate.

Recommendations 3 and 4

The government should repeal the legislation that allows work seekers to opt out of equal pay entitlements (known as the 'Swedish Derogation'); and

In addition the government should consider extending the remit of the EAS Inspectorate to include compliance with the Agency Worker Regulations (which would include enforcement of the Swedish Derogation, if not repealed).

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

The purpose of PBA contracts is to allow workers to trade off their right to pay parity with employees of the end user against the receipt of a basic income for periods when the agency has no work to offer them. In return the hirer has certainty that it won't be subject to pay parity claims, For that derogation from the AWRs to be worthwhile to workers there needs to be a strong case that workers benefit from that trade off in reality and that agencies do not avoid their obligations to provide PBA where, in reality, workers do not have freedom of choice as to whether to accept a PBA contract.

In theory, PBA contracts can be mutually beneficial to both workers and employers, for instance the entitlement to '4 weeks pay between assignments', without work before the agency can end a contract is valuable to workers.

However, Citizens Advice frequently sees cases where PBA contracts are abused. In particular some agencies seek to avoid paying workers between assignments by creating jobs, requiring workers to be physically present at the agency's office or offering inappropriate work.

Case study: Rav

Rav works as a cleaner for an agency, and has been cleaning in the offices of a large company for 3 months, when his assignment comes to an end. When he started at the agency, he was given a Contract of Employment which he didn't really understand, but he knows that he was told that if the agency couldn't find work for him, he'd be entitled to 4 weeks' half pay.

When the agency tells him they don't have any work to offer him at the moment, he asks about the half pay. A few hours later the agency calls him back and says it does, in fact, have a new assignment. However it involves cleaning in a factory 30 miles away, starting at 5am each morning. Rav doesn't have a car and there's no public transport that would allow him to get to the site at that time in the morning. He declines the offer, and asks for his half pay. The agency says that it has offered him suitable alternative work. They point out that his contract says he has agreed that he will be available to work within a 50-mile radius of their office. They have no obligation to pay him his half pay because he is not 'available' for work.

He seeks advice. On the face of it, the agency is acting lawfully. If Rav was to challenge the non-payment of pay between assignments, his argument would be based on whether the alternative work that has been offered to him was 'suitable' or not. He'd have the difficulty of showing that it was not suitable, despite his agreement to be available for work within a 50-mile radius. He'd argue that the question of what was 'suitable' alternative work needed to take into account his individual circumstances, the travel issues and the fact that there's no realistic prospect of him being able to carry out the work offered.

The purpose of the Agency Worker Regulations is to prevent employers from using agency workers to undercut full time employees. Where agencies are abusing PBA contracts - by not giving workers a choice about whether they sign up to one, or by avoiding paying workers between assignments, or by using PBA contracts for long-term contracts - they are using them to circumvent the purpose of those regulations.

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

Workers rights are only as strong as their ability to enforce them. Currently, enforcement often works badly for workers. Our upcoming research[1] found that where workers feel they can't enforce their rights, they often don't continue to escalate them. Our survey found that fewer than 1 in 10 (5%) employees who experienced a problem were able to resolve their problem with their employer which was the most common place to turn when experiencing an issue.

[1] Using our data, and a survey of 903 people with experience of employment issues on our website

Overall, 45% of people said they didn't take any action to try and enforce their rights. There are 2 main reasons why. First, people are put off by perceived complexity. Among people who didn't seek redress, our survey found that 45% did nothing because they didn't think anyone would be able to help, and 32% because they thought it would be too difficult and complex.

Second, people felt they couldn't get the support they needed. Though almost two thirds (64%) of our survey respondents had heard of ACAS, of the respondents that didn't approach any people or organisations for assistance, 31% said they didn't do this because they didn't think anyone would be able to help. 19% of respondents said it was because they found the support system too difficult to navigate.

State enforcement is absolutely essential to making sure people are treated fairly at work and receive the rights they are entitled to.

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?

As noted above, the best way to improve enforcement would be to create a single employment enforcement organisation - the Fair Work Authority. Short of that, the EAS inspectorate should have responsibility to enforcing the Agency Worker Regulations, including the Swedish derogation if it isn't repealed.

Please contact for further information

We help people find a way forward

Citizens Advice provides free, confidential and independent advice to help people overcome their problems.

We advocate for our clients and consumers on the issues that matter to them.

We value diversity, champion equality and challenge discrimination.

We're here for everyone.

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Published May 2018
Citizens Advice is an operating name of The National Association of Citizens Advice Bureaux.
Registered charity number 279057.