

GC100 response to 'Consultation on agency workers recommendations'

Section 4. Consultation questions

Definitions

Are you (select the appropriate option):

Respondent type

X Business representative organisation/trade body

Name: GC100

About GC100:

GC100 is the association for the general counsel and company secretaries of companies in the UK FTSE 100. There are currently over 125 members of the group, representing some 82 companies. Please note that, as a matter of formality, the views expressed in this letter do not necessarily reflect that of each and every individual member of GC100 or their employing companies.

If you are responding as an individual, which best describes your employment status? (select the appropriate option):

N/A

If you are an employer, how many employees work for your organisation?

If you are employed, how many people work for your organisation?

N/A

If you represent employers or employees/workers, who do you represent?

Other (please specify below)

Membership Association

GC100 response to 'Consultation on agency workers recommendations'

Section 1: Improving the transparency of information provided to work seekers		
1.	<p>To what extent would you agree that a key facts page would support work seekers in making decisions about work?</p> <p>Agree strongly</p> <p>Agree slightly</p> <p>Neither agree nor disagree</p> <p>Disagree slightly</p> <p>Disagree strongly</p> <p>Don't know</p>	<p>GC100 members agree strongly that a key facts page would support work seekers in making decisions about work. Many of the agencies which the GC100 members use already provide a key facts page and therefore having an obligation to produce one would generate minimal additional work.</p> <p>GC100 members believe this would help from a risk perspective and to provide additional clarity across the sector. There can be an element of confusion for contractors in certain industries, with some individuals unaware of the name of their actual engaging company. This key facts page would help to eliminate that confusion and bring welcomed clarity. However, the need for clarity should be balanced against the (minimal) additional work that will be created.</p> <p>Some GC100 members note that the government may just be creating an obligation to create an extra document which contains information already accessible to individuals.</p> <p>GC100 members believe the government will need to be considerate of the fact that agency workers often work a number of short-term assignments to cover the demands of often numerous businesses. The engagement terms of these short-term assignments can vary (e.g. pay/other entitlements), therefore the conditions attached to the key facts page need to be high level and not too prescriptive to allow for differing rates of pay from each engaging entity.</p> <p>GC100 members would like some clarity on whether the requirement to provide a key facts page is only applicable to engaging entities (i.e. businesses which supply individuals to end</p>

		<p>users), or whether there are any plans now or in the future for the requirement of a key facts page to be provided by end users to any individuals, including, for example contractors engaged through limited companies etc.</p>
a)	<p>If slightly or strongly agree, what key facts do you think should be made prominent?</p>	<p>GC100 members believe that key facts such as: length of assignment and day rate (gross) should also be made prominent on the key facts page.</p> <p>GC100 members consider that in relation to employment/engagement arrangements where an intermediary is involved, it is important that the roles/responsibility/duties expected of the individual are aligned from both the intermediary and the business that the individual ultimately performs work for. There should not be any disparity between what the individual understands from the intermediary, and what the business they work for actually requires from that individual. The key facts page must have clarity at its core.</p> <p>GC100 members would draw an analogy here with mortgages in terms of what the Government may be seeking to achieve: a 'key summary document' is provided outlining the type, term and rates of the mortgage.</p> <p>GC100 members do not consider that the key facts page should go so far as to include whether the engagement is covered by IR35. GC100 members feel that the key facts page is not the forum to place every piece of information relevant to that individual. If the key facts page is too long, this runs the risk of becoming a lengthy document, potentially discouraging individuals from reading it.</p> <p>Some GC100 members note that considering the short-term nature of agency workers assignments, one 'condition' may be that a key facts page does not need to be provided until an agency worker has completed 12 weeks' service with an employment business.</p>

b)	If slightly or strongly disagree, please provide reasons below	
c)	<p>Thinking about work seekers, would ensuring work seekers are provided with a key facts page have a:</p> <p>Significantly positive impact</p> <p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p> <p>No impact</p> <p>Don't know</p>	GC100 members consider that this question is better answered by individuals or their representatives.
	<p>Thinking about employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a:</p> <p>Significantly positive impact</p> <p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p>	GC100 members consider that this question is better answered by individuals or their representatives.

	<p>No impact</p> <p>Don't know</p>	
2.	What information would be important to include in a "key facts" page?	GC100 members consider that the proposed contents of the key facts page is what they would expect to see.
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?	<p>GC100 members understand this question to be asking whether there needs to be a mechanism in place to ensure that the individual understands and accepts the key facts listed on the key facts page.</p> <p>The majority of the GC100 members are of the opinion that it would be unreasonably onerous to place an obligation upon the engaging entity requiring it to ensure that the individual understands and/or accepts the key facts listed on their key facts page.</p> <p>GC100 members note that currently engaging entities are not required to sit down with individuals to explain their terms of engagement, therefore this should not change now.</p> <p>Some GC100 members note that if employment businesses are overburdened with compliance/regulatory documents for agency workers, this detracts from the value of using agency workers as a quick/easy resourcing pool when demand fluctuates.</p> <p>There could be a separate mechanism to check that the individual has 'received' or 'seen' the key facts page. This would be separate from the individual certifying they had 'understood' the key facts page.</p>

		GC100 members note that if the government believes extra guidance or advice is needed by employee/agency workers, this should be the remit of ACAS or the Citizens Advice Bureau to provide guidance notes to assist these individuals with their decision making.
3.	<p>Should an employment business be required to ensure that the work seeker understands fully the information being given to them?</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	GC100 members are of the view that organisations should not be placed under an obligation to ensure that an individual has understood the information being provided in the key facts page. In work seeker/employer or engager relationships a certain level of understanding has to be assumed and this would extend to include a level of understanding of the terms under which they are engaged. To introduce a new obligation along these lines would be to a new concept in employment law terms which would be very onerous for businesses.
a)	If yes, how do you think this should be achieved?	<p>Some GC100 members are of the view that because most recruitment is undertaken online, an online acknowledgment of receipt of the key facts page is sufficient and all that is required. Other GC100 members are of the view that it would be preferable to have certification from the individual that they have read and understood the key facts page.</p> <p>If individuals require further information, they should be encouraged to proactively reach out to obtain this, and details of how to do so should be provided to them.</p>
4.	<p>Do you feel an hour is an accurate estimate of the time it would take to produce information document for a work seeker?</p> <p>About right</p> <p>Too high</p> <p>Too low</p>	<p>GC100 members are of the view that there are two aspects to the creation of a key facts page. The first element of this time is the physical creation of the document. The second element of this time is the approval process, risk analysis and business sign-off that would be required.</p> <p>GC100 members are of the view that as the contractual creation process is largely automated, the requirement for creating the facts sheet is at a maximum 30 minutes to 1 hour. However, the second time requirement of 'risk review/sign-off' could take longer than an hour.</p>

	Don't know	<p>Furthermore, any changes to the rules of the document would also require additional work to keep it up to date.</p> <p>GC100 members would appreciate some clarity around the requirement to update when a work assignment is extended with the end user. GC100 members are unclear whether this would trigger the requirement for a new key facts page.</p> <p>Some GC100 members note that it would be preferable if the government created a template for employing entities to consider, but there should also be a 'create your own' option to maintain flexibility and house style.</p>
a)	If too high or too low, please provide reasons for your answer below:	See above.
b)	<p>Other than the time taken by personnel to produce a "key facts" document, are there other business costs we should be aware of?</p> <p>Yes (please provide details)</p> <p>No</p> <p>Don't know</p>	GC100 members believe there would also be development time required. This would create an additional cost. Employing entities may have to create processes/software by which a key facts page can be generated. Furthermore, these entities may also have to set up a portal by which they can ensure the individual has received/acknowledged and understood the terms of the key facts page.
Section 2: Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain		
5.	Have you used or are you currently using an umbrella/intermediary?	GC100 members typically use one primary supplier which manages all of their engagement relationships for temporary and contingent workers. That primary supplier will typically

	<p>Yes</p> <p>No</p> <p>Don't know</p>	<p>conduct all the dealings with umbrella companies and intermediaries within the supply chain. GC100 members normally audit their supply chain to ensure that compliance standards are met.</p> <p>The view of GC100 members is that a higher level of transparency is to be welcomed to ensure that there is a consistent level of compliance amongst umbrella and intermediary suppliers. Enhanced regulation and guidance to provide a 'level playing field' is to be welcomed so that organisations which do not meet compliance standards are not given an unfair competitive advantage and to ensure transparency for both hirers and work seekers.</p>
a)	If so, for what reason? e.g. as a work seeker or employment business for payroll purposes. What has your experience been?	See the response to question 5 above.
6.	<p>Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?</p> <p>Please provide reasons for your answer</p>	GC100 members consider that this is a question best answered by individuals and their representatives.
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)	GC100 members, as outlined at 5) above, consider that the remit of the Employment Agency Standards inspectorate should be extended to cover the activities of umbrella companies and intermediaries.

	<p>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?</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	
	<p>ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework⁸ 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?</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	
	Please provide reasons for your answer below	
a)	Thinking about work seekers would ensuring umbrella companies provide work seekers with a key facts page have a:	GC100 members, as outlined already, believe that a key facts page would bring clarity and transparency to both parties in an umbrella company relationship.

	<p>Significantly positive impact</p> <p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p> <p>No impact</p> <p>Don't know</p>	
	Please provide reasons for your answer	
	<p>Thinking about employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a:</p> <p>Significantly positive impact</p> <p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p> <p>No impact</p> <p>Don't know</p>	<p>GC100 members, as outlined already, believe that a key facts page would bring clarity and transparency to both parties in the recruitment sector.</p>

	Please provide reasons for your answer	
b)	<p>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:</p> <p>Significantly positive impact</p> <p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p> <p>No impact</p> <p>Don't know</p>	GC100 members, as outlined above, consider that this would have a significantly positive impact.
	Please provide reasons for your answer	
	<p>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:</p> <p>Significantly positive impact</p>	

	<p>Small positive impact</p> <p>Some negative and some positive impact</p> <p>Small negative impact</p> <p>Significantly negative impact</p> <p>No impact</p> <p>Don't know</p>	
	Please provide reasons for your answer	
Section 3: Ensuring the Swedish Derogation is used appropriately		
8.	<p>Have you used or are you currently using a pay between assignments contract (PBA)?</p> <p>Yes</p> <p>No</p> <p>Don't know</p>	<p>GC100 members do not make use of the Swedish Derogation for their directly employed employees. They are typically unaware of whether this happens amongst the agencies that may supply workers to them. In the event that organisations are supplying workers to end users involving use of the Swedish Derogation, this is not made known to the GC100 members. This is because agency fee arrangements, and the basis upon which agency staff are engaged by agencies, do not generally make it apparent to end users whether the Swedish Derogation is being utilised.</p>
9.	In your experience what are the benefits and any problems associated with working on a PBA contract basis?	

10.	<p>In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?</p> <p>Very effective</p> <p>Fairly effective</p> <p>Not very effective</p> <p>Not at all effective</p> <p>Don't know</p>	
11.	<p>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?</p>	GC100 members, as a whole, see no wider issues.
a)	<p>Do you believe that that the above issues would justify wider state enforcement?</p> <p>Yes</p> <p>No</p> <p>Don't know</p> <p>Please provide reasons for your answer below</p>	As outlined at 11) above, GC100 members are not aware of any wider issues with PBA contracts and see no additional reasons to justify wider state enforcement.

12.	<p>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?</p> <p>Agree strongly</p> <p>Agree slightly</p> <p>Neither agree nor disagree</p> <p>Disagree slightly</p> <p>Disagree strongly</p> <p>Don't know</p> <p>Please provide reasons for your answer</p>	<p>GC100 members consider they are generally unable to comment, as they have not encountered or experienced enforcement of the Agency Worker Regulations 2010. The general understanding is that the enforcement of these Regulations is often focused on more unscrupulous agencies. Any additional regulation in this sector should focus on such agencies and blanket rules affecting current well run organisations should be avoided as this would be a burden on businesses.</p> <p>GC100 members agree that they have experienced no issues or problems with the agency worker arrangements in their current form.</p> <p>The GC100 members can see that having one body (such as the Employment Agency Standards Inspectorate) enforcing the rights of individuals could provide greater protection to those not currently benefiting from the protection given under the Regulations.</p> <p>GC100 members are ultimately of the agreed view that they do not encounter issues with the enforcement of the Agency Worker Regulations 2010 as they stand.</p>
	Any further comments	