



RESPONSE TO CONSULTATION

GOOD WORK: THE TAYLOR REVIEW OF MODERN

WORKING PRACTICES

CONSULTATION ON AGENCY WORKER RECOMMENDATIONS

Contact Details

What organisation do you represent (if any)?

GMB

If you are representing an organisation, what type of organisation is it?

Trade Union

Are you happy for your response to be published?

Yes

Would you like to be contacted when the consultation response is published?

Yes

GMB, Britain's general union, represents over 620,000 members throughout the UK in both the private and the public sectors. We have members working in the following areas of:

Financial, commercial and professional services

Clothing and textiles

Construction

Furniture Manufacturing

Energy and Utilities

Engineering

Food and Leisure

Process Industries

Public Services

Voluntary and Community/Third Sector

Introduction

GMB welcomes the opportunity to respond to the consultation. GMB made a submission to the Matthew Taylor Review of Modern Practices in 2017 and we refer to this in our response to the present specific consultation on agency workers. As a union affiliated to the TUC we also refer to research and survey materials provided by the TUC to assist unions in responding to the present consultation.

Our response is based on:

- i. Our collective day to day experiences representing members in a range of workplaces
- ii. Positions determined democratically by our membership

- iii. A qualitative survey of primarily GMB members between 24th November 2016 and 9th December 2016 into current experiences of work which attracted 866 detailed responses.
- iv. Our experience in legal cases and pursuing justice on behalf of workers

In the words of GMB members:

Below is an extract from the responses from GMB members which we submitted to the Taylor Review when we consulted about the biggest issues facing people at work, including experiences of agency working and the impact on life outside work. Concerns with working conditions in their workplace were not confined to the private sector, job role, nationality or age group. When asked about the experiences of agency workers (and casual workers) here are examples of what was said:

'Bullied, pushed too hard to achieve targets, treated as a commodity rather than a person, shown little respect'

'Agency/zero hours workers are walking a thin line in the workplace, because they have tremendous pressure hanging above them. They are always threatened by dismissal/release if they don't do their jobs right (or even if they do it), thus being the most physically and psychologically exploited workers.'

'Sitting by the phone waiting for a chance to feed your families is not acceptable'

'They are often undermined by the employer and have so much uncertainty. They fear turning work down but are stressed with the amount of work they are being

given. There is no way of knowing how many hours they actually are putting in as some have more than one employer.'

'I have had to defend agency workers who have been called in to disciplinary hearing for going to the toilet and on one occasion for sustaining an injury.'

'The ability to instantly cut the amount of hours an employee can be given leads to abuse as the employee cannot stand up to employer as they fear cut hours.'

'They get little or no rights at work. I have seen them not get sick pay, little notice of work being available or not and penalized when they can't pick up the hours at short notice due to child care or other similar reasons.'

'They are afraid to raise any issues and often will accept abuse or unfair distribution of work simply to keep a job. Disabled agency staff are particularly at risk and vulnerable with agencies seeming not to have policies around how bullying is managed. They should be forced to have these policies in place with proper mechanisms for managing any issues which arise. Employers should not be able to wash their hands of issues simply because they are agency workers and therefore someone else's problem.'

'My job is standing in one place, 8 hours a day sometimes 10 hours inducting clothes into an automation system. At the end of each day my feet and legs hurt. No one is allowed to sit unless they are pregnant.'

When asked about the impact of work on the rest of their lives, responses included:

'I work weekends and shifts so I don't often see my wife or family for full days. My wife and family have a 9-5 Monday to Friday jobs so we don't often have quality time together. I work 12 hour shifts which are always extremely busy and I often go over 8 or 9 hours without a break and regularly finish later than my scheduled finish time. This means that my first day off is spent catching up on sleep and feeling worn out.'

'No life outside of work! Always working on the same shift pattern, night shift, never a weekend off, no time to have a private life'

'Work life infringes on my ability to see family and friends, and I find I am too tired to do much on my days off.'

'Once my bills are paid I have no disposable income to have any, extras, fun. I am too exhausted to have any energy left to socialise.'

'Stress levels are the major worry. I work so hard during the week that I have nothing left at the weekend. It has a negative effect on my relationships too, as I'm often too tired to socialise and can be easily irritated due to tiredness.'

The responses from the survey indicated a deep unhappiness with the growing insecurity of jobs and the toll it takes on individual lives. There are clear concerns at the two-tier employment experiences between employees with a permanent contract and those employed on a short-term basis or through an employment agency.

Even permanent members of staff reported greater pressure and demands by managers outside of paid hours often resulting in increased stress and mental health issues. In the public sector the consequences of redundancies and budget cuts while demand increased has resulted in unmanageable workloads.

Regular Work and Income

Very few of those who have been agency workers for a sustained period of time, would willingly choose that arrangement over a permanent contract. Media coverage often unfairly focuses on a person who likes “modern working practices” rather than the majority who in our experience do not. Many companies argue for the flexibility agency work provides them with – and it does. It provides the flexibility to have workers when and where they want, for as long as they want. For the worker, this can often mean not knowing what hours they will work, the constant worry of an agency job ending with little notice and no recompense and it means fewer employment rights. When it comes to exercising the rights that do exist for agency workers, many such workers will choose not to ‘make trouble’ or demand their rights be enforced because their contract can be ended easily. This is a growing sector of the workforce and it is again a situation where flexibility for the employer means insecurity for the worker.

Treatment of agency workers

Our survey of members demonstrated a wide level of unhappiness at the way agency workers were treated. It is GMB’s view that a growing number of employers are using disproportionate numbers of agency workers because of their low level of rights at work, rather than because of an urgent short-term unplanned increase in demand. Recent research by the Resolution Foundation indicates there are now

865,000 agency workers in the UK of whom 340,000 are employed on a temporary basis to meet a short-term demand.

<http://www.resolutionfoundation.org/app/uploads/2016/12/Secret-Agents.pdf>

The on-going and use of large numbers of agency workers is increasingly becoming a core part of business models which is not what was originally intended by policy-makers. GMB believes that ensuring all workers have rights at work from day one would significantly lower demand for agency workers and improve their job security. Government should legislate to restrict the proportion of agency workers that businesses can deploy at any one time – this would stop unscrupulous employers from manipulating the system.

Inspections

According to FLEX (Focus on Labour Inspection] the UK has 'some of the worst inspection rates of any country in Europe with just 0.9 labour inspectors per 100,000 members of the workforce. This is in contrast compared with 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France (FLEX, 2015, 3). The UK therefore has one of the smallest labour inspectorates in Europe....'

Government spending cuts to existing inspectors will only make their job harder.

<http://www.labourexploitation.org/sites/default/files/publications/FLEXBISConsultationFINAL.pdf>

GMB has specific concerns about non-compliance with the Agency Workers Regulations (AWR) and these are not confined to the Swedish derogation. Recent research by the TUC reveals that agency workers continue to suffer a significant pay penalty, earning on average £1.50 an hour less than permanent employees. Many

agency workers also lose out on paid holidays when compared to directly employed staff who they work alongside.

Enforcement of the Agency Workers Regulations needs to be enhanced. The remit of the Employment Agency Standards Inspectorate (EAS) should be extended to include the enforcement of the Regulations. It is vital that the EAS is properly funded to perform any additional duties. The EAS is currently seriously under-resourced. As GMB understands it in 2017/18, the EAS only has a budget of £725,000 to ensure that 23,980 recruitment agencies comply with the Conduct Regulations. They have a total of 12 full time equivalent staff. The limited resources available to the EAS make it impossible for them to address the issues confronting the sector.

The Swedish Derogation

GMB welcomes the government's long overdue review of the 'Swedish derogation' in the Agency Worker Regulations. For many years, GMB, the TUC, and other unions have called for the derogation to be repealed as it being used to mistreat agency workers and drive down pay and conditions. As will be noted in 2013 the TUC formally complained to the European Commission that the UK government had failed properly to implement its obligations under the Temporary Agency Worker Directive.

GMB refers to the recent TUC report *Ending the Undercutters' Charter: Why agency workers deserve better jobs*. This confirms that agency workers employed under the derogation are often paid far less than directly employed staff, even though they are doing the exact same job with the same level of responsibility. Employers and agencies are exploiting the derogation to employ agency workers on a long-term basis in order to reduce their wages' bill and to undercut the pay and conditions of

permanent staff. GMB supports the recommendation of the Taylor Review that the Swedish derogation should be removed as a matter of urgency.

Umbrella Companies

GMB believes that the rapid expansion in umbrella companies and other intermediaries in the recruitment sector in recent years are having adverse consequences for agency workers. The way that umbrella companies operate means that there is a lack of transparency. Agency workers are often unaware who their employer is or whether an umbrella company is involved in their engagement.

This makes it difficult to enforce their employment rights. Workers are also often misinformed about the rate of pay they will receive and the level of deductions to be made for employers' national insurance contributions and to cover the umbrella company's profit margins. Such deductions lead to lower pay for agency workers and even the non-payment of the national minimum wage in some cases.

GMB would support measures which ensure that:

- All work seekers are provided as a minimum with a key facts sheet when they first register with or at the start of their engagement with an employment business or employment agency and before any new assignment with a hirer.
- Agencies and umbrella companies which fail to provide accurate key fact sheets should face substantial penalties.

GMB believes that measures are also needed to clamp down on the substandard practices found throughout the umbrella company sector.

- Umbrella companies should be required to comply with the same standards which apply to employment businesses and agencies.
- The remit of the Employment Agency Standards Inspectorate should be extended to cover umbrella companies with appropriate additional resources being applied to allow them carry out this work
- The Conduct Regulations should be amended to ensure that the contractual rates agreed between the recruitment agency and the umbrella company include an uplift to cover any administrative fees charged by the umbrella company.

The case for comprehensive change

However, GMB believes that much wider change is needed to prevent the abuse of agency workers and that the Government's present proposals do not go far enough to address these issues.

General

It is GMB's view that:

- The current employment rights system is not fit for a 21st century workforce. Employment rights have not kept pace with the changing nature of the working world.
- Where employment rights do exist, the proliferation of agency work effectively limits access to those rights for hundreds of thousands of working people. All workers merit employment rights from day one, and if this was the case it would help to address the insecurity and poor treatment of agency workers.
- A much stronger inspection regime is required. Trade unions are part of the solution with workplace reps that can ensure laws are enforced and to help improve pay and working conditions. Workers should therefore have the right to

invite unions to access workplaces to inform them of rights, laws and to represent and collectively bargain for them as well as ensuring employment law is correctly applied.

- HMRC has a responsibility to investigate companies suspected of using precarious forms of employment or bogus self-employment to avoid paying the correct level of tax. The current lack of transparency and willingness to investigate and pursue employers further incentivises exploitative behaviour.
- Unless workers can enforce legal employment rights then their practical value is diminished.

Minimum Standards

In recent years, GMB and other union's campaigns and media reporting have exposed exploitative practices by agencies and the serious mistreatment of agency workers in companies such as . In these firms, non-payment of the national minimum wage has been reported as widespread and workers were often subjected to bullying and degrading surveillance in the workplace. As the TUC has highlighted, such practices are not be limited to a few "bad" employers. It is widespread in the UK agency sector.

The recent report published by the office of the Director of Labour Market Enforcement confirmed that the scale of non-compliance with the Conduct Regulations has increased dramatically in recent years. According to the EAS, the top three sectors for non-compliance are industrial, entertainment and education, with breaches in the education sector alone increasing tenfold in 2015-16, compared to the previous year.

The Equality and Human Rights Commission Inquiry into the meat processing sector in 2010 for example also found evidence of widespread mistreatment of agency workers, particularly migrant and pregnant workers. Agency workers often failed to receive holiday pay and some were coerced to do double shifts when they are tired or ill.

As GMB understands its recent research commissioned by the Joseph Rowntree Foundation, and referred to by the TUC, has similarly found widespread exploitation of agency workers in the UK food industry, including the regular underpayment of wages. Workers were threatened and bullied. Racist or sexist language was sometimes used in the workplace, underpinning a climate of fear. This has also revealed the existence of the forced labour practice of the 'underwork scam'. This involves recruiting too many workers and then giving them just enough employment to meet their debt.

There is nothing in the government's proposals to protect agency workers from this type of treatment.

Transfer of Risks

As indicated above many employers argue for the flexibility that agency work provides them with. By relying on agency workers, companies can transfer the risks of changing demand for their goods and services on to the employment business and subsequently to the work-seeker. Employers have the "flexibility" of being able to hire and fire agency workers as and when needed, without the need to follow normal employment procedures. In contrast, agency workers find they are offered work at very short notice or that their hours can be reduced or cancelled without notice or

financial compensation, making it difficult to budget, to plan childcare and organise their life away from work.

GMB also believes that some employers intentionally use agency work and umbrella companies to transfer their employment responsibilities. In the experience of GMB few such employers check whether their labour suppliers comply with minimum standards and are treating agency workers fairly. The involvement of agencies and umbrella companies can lead to the creation of long supply chains which, in turn, increases the likelihood of non-compliance and makes it harder for workers to enforce their rights.

The Loss of Rights

Agency workers also miss out on basic rights in the workplace. UK legislation actively excludes or limits entitlements for agency workers, including the right to request flexible working and paid time to attend ante-natal appointments.

The three-way nature of their employment also means agency workers may fail to qualify for key rights, such as protection from unfair dismissal. Access to such rights depends on an individual having a contract with the *right* employer. This creates difficulties for those employed through agencies and umbrella companies who are deemed not to have a contract with the end user, even though it is the hirer who benefits from any work performed by the agency worker and they who will often decide that the individual should be dismissed (for example see the case of *James v London Borough of Greenwich* from 2008 decided prior to the Agency Worker Regulations but highlighting the vulnerability of agency workers in the absence of

statutory protection). As a result, individuals may face the loss of their rights from all parties and the employer is not held to account for breaches of employment law.

Being in such a precarious situation means it is very difficult for workers to complain if they are treated badly. The lack of basic rights and their dependence on hirers and agencies for future offers of work means agency workers are usually reluctant or afraid to challenge bad practice. As a result, they risk having the few rights they do have disregarded.

Permanent Work

There appears to be little evidence that Agency work is a stepping stone into regular employment in many sectors and workplaces, at least for the less skilled. As the TUC has highlighted official statistics suggest that more than 420,000 agency workers have been in their jobs for more than a year, and over 120,000 have worked for an agency for over five years. Agency workers can remain trapped in low paid, insecure work, with few rights in the workplace. Younger agency workers are particularly missing out on career progression with over forty per cent of all those who have been in agency work for over a year being in the 16 – 34 years age group.

GMB calls for the Government at the very least not to ignore the recommendation in the Taylor review that agency workers should be given a *"right to request a direct employment contract with the hirer when they have been engaged with the same hirer for 12 months."*

What needs to be done?

As a first step GMB believes that the government needs to introduce wide-ranging reforms to protect agency workers. These should include

- The repeal of the Swedish derogation, to ensure all agency workers have the same rights to equal pay.
- After 12 weeks doing the same job for the same hirer, hirers should be required to carry out a review to assess whether the work will be required on an on-going basis. Where this is the case, agency workers should be offered a permanent contract with the hirer.
- The rules on employment status should be strengthened to ensure agency workers benefit from the same floor of minimum rights as permanent workers.
- The government should extend Gangmaster Licensing Authority licensing to other high risk sectors such as education and industry (including the engineering construction industry).
- The law should be reformed to ensure end-users, agencies and umbrella companies are jointly and severally liable for any breaches of employment law during any assignments.
- The government should substantially increase the level of resources for the Employment Agency Standards Inspectorate. 12 staff is insufficient to carry out the duties that the role requires.
- There should be an increase in the penalties for non-compliance with agency workers' rights. Agencies and umbrella companies which breach minimum standards should be required to pay increased fines and full compensation to work seekers.

- Public procurement rules should be amended to ensure that agencies and umbrella companies which breach agency workers' rights are excluded from public contracts.
- The government should legislate to restrict the proportion of agency workers that businesses can use at any one time to avoid unscrupulous employers from manipulating the system.

The Employment and Workers Rights Bill

GMB draws attention to the Private Members Bill from Stephanie Peacock MP The Employment and Workers Rights Bill and the proposed provisions relating to the duty to assess a right to a contract of employment which aim to ensure that employers who require agency work on an on-going basis offer permanent contracts after 6 months or if the worker has been hired for 9 months of the previous 12 months (clause 40). In addition the Bill proposes additional unfair dismissal rights in respect of those who are working under the supervision and direct of the hirer (clause 2). A copy of the Bill is attached to this response. The Bill reflects general concerns about the vulnerability of Agency Workers.

The role of trade unions

Trade Union Workplace reps help to give workers a collective voice and speak out in insecure workplaces without fear of reprisal. Reps help negotiate for greater investment in skills, push for improvements in health and safety, collectively bargain for fairer pay and conditions and contribute worker's insight to decision-making when consulted. Employment laws are important and can make a profound difference. However, if they are not enforced on the ground then they are in practice worth less.

Having union-trained reps familiar with employment law helps ensure businesses don't fall foul of the laws in the way they treat workers.

More and more workplaces would benefit from trade union reps and agreements to work with trade unions. It can be good for the businesses as well as for the employees, society and the economy as a whole. Yet the employers that flout employment law the most, exploit their workers and create a stressful working environment have the most to hide. They often do the most to prevent trade unions from speaking to their workforce or represent their members on the site. GMB believes that every worker should have the right to invite a trade union to their workplace and join a union without any resistance.

This response now goes on to consider the specific questions in the consultation.

SECTION 1

Improving the transparency of information provided to work seekers

Question 1

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

Slightly agree.

GMB is concerned that practices in the recruitment sector increasingly lack transparency, especially where umbrella companies are engaged.

Agency workers are often unaware who their employer will be, whether they will be employed via an umbrella company, how much they will be paid for work on an assignment or what deductions will be made from their wages.

Providing work seekers with a key facts sheet may help to improve transparency. But, being provided with additional information on its own is unlikely to have a significant impact on worker seekers' decisions about work. Any such benefits will be limited to those individuals who have a genuine choice whether to accept the work which is being offered or not. For many GMB members there is no choice.

In many industries and communities, agency work is one of the few work options open to them. For example, as the TUC has noted a report prepared for Liverpool City Council in 2014, revealed that of the 13,771 vacancies advertised in Merseyside at the time, nearly half – 6,600 – were for temporary agency work.

And in some sectors, individuals have no choice but to sign up with an umbrella company when seeking work. The construction industry is an increasingly common example of this. Teachers are pressurised by recruitment agencies to use umbrella

Question 1 (a):

If slightly or strongly agree, what key facts do you think should be made prominent?

GMB believes that it is important for a work seeker to receive all relevant information when they first register with an agency or umbrella and before each assignment. However, it may be helpful if prominence was given to information about:

- their pay and hours of work who will be responsible for paying them

- their holiday entitlement and how holiday pay is calculated
- the start date for an assignment and how long the contract is likely to last
- any health and safety risks
- whether they will be employed via an umbrella company or intermediary. Where this is the case, they should also receive written confirmation that:
 - they are employed on a contract for employment and therefore will be entitled to all employee rights
 - any administrative fees for umbrella companies will be deducted from any uplift negotiated between the agency / umbrella company and the end user but not be deducted from the pay assigned for their work
 - they will be paid at least the same hourly remuneration that they would have received had they been employed directly by the agency
 - they will have rights under the Agency Worker Regulations
- what statutory or other deductions will be made and by whom they will be made

GMB believes that the Swedish derogation should be repealed. But if it is retained, the key facts sheet should make it clear if the agency worker is being asked to sign a pay between assignments contract. It should emphasise that by signing the contract the individual will lose the right to be paid at least the same pay as directly employed staff doing the same job.

Question 1 (c):

Thinking about work seekers and employers in the recruitment sector, what would be the impact of ensuring work seekers are provided with a key facts page for;

(i) Work seekers

GMB believes that creating a new statutory right to a key facts sheet would have a small positive impact for individual work seekers.

GMB believes it would be beneficial to provide work seekers with a key fact sheet setting out clear and full information about:

- who their employer is (including, where relevant, an umbrella company or intermediary)
- their pay rates, hours of work, and who is responsible for paying them
- their holiday entitlements and how their holiday pay has been calculated
- any statutory and non-statutory deductions which will be made from their gross pay

Enforcement agencies and union officials will also be able to use the key fact sheets to assess whether the employment business or umbrella company/intermediaries are breaking the law and to take relevant enforcement action.

Further GMB believes that the fact sheet should include a reference as to how rights may be enforced including information on time limits, ACAS Early Conciliation, plus a description of what trade unions are, alongside Citizens Advice Bureau. This would underpin the support for agency workers.

(ii) Employers in the recruitment sector

Creating a new statutory right to a key facts sheet will also have a significantly positive impact for employers in the recruitment sector.

Requiring employment businesses to prepare key facts sheets will improve compliance levels in the recruitment sector. As a result reputable agencies are less likely to be undercut and to less likely face unfair competition by unscrupulous firms.

Question 2

What information would be important to include in a “key facts” page?

In line with existing requirements under the Conduct Regulations, the key fact sheet should include information about:

- whether the worker will be employed under a contract for services or a contract of employment
- job title
- the relevant notice period
- their pay and hours of work
- their holiday entitlement and how their holiday pay will be calculated
- the start date for an assignment
- how long the contract is likely to last
- any health and safety risks
- the type of work the work seeker will be expected to undertake and the location of the work
- any experience, training or qualifications needed for the role
- any expenses they may have to pay

The key facts page should include the following addition information:

- who will be responsible for paying the work seeker, and how they are being engaged
- what statutory deductions will be made and by whom

- any other fees, costs or charges that will be deducted.
- Work seekers should be reminded of their right to refuse any services provided by the agency and to do so without suffering any detriment.
- The facts sheet should also clearly state it is unlawful for employers to charge fees for work searches.
- Any additional benefits that will be provided or offered, for example, access to a benefit in kind scheme or childcare vouchers.
- Whether they will be employed via an umbrella company or intermediary. Where this is the case, they should be informed about:
 - what they will be paid by the umbrella company or intermediary
 - any statutory deductions which will be made, including relating to employers' national insurance contributions, employers' pension contributions or the apprenticeship levy
 - any tax relief they will receive on any travel expenses incurred during the course of their work

They should also receive written confirmation that

- they are employed on a contract for employment and therefore will be entitled to all employee rights such as unfair dismissal and redundancy
- any administrative fees for umbrella companies will be deducted from any uplift negotiated between the agency / umbrella company and the end user but not be deducted from the pay assigned for their work

This should be contained in a single document. The employment business and / or umbrella company or intermediary should also provide the worker with an updated

document whenever the individual starts a new assignment with an end user and when any of the relevant information changes.

The government should assist the recruitment sector by preparing online template forms. This would assist employers and also Agency workers who receive a completed template form as they would have some confirmation that they have been provided with all the relevant information.

Question 2 (a)

What conditions should be in place to ensure the “key facts” page is provided and understood by the workseeker before any contractual engagement?

GMB believes that work seekers should have a right to a key facts sheet when they first register or start an engagement with an employment business and when they are offered a new assignment with an end user. Employment businesses and umbrella companies which fail to provide work seekers with a key fact sheet, or a complete fact sheet, should face substantial penalties. The work seeker should also be properly compensated. The provision of accurate key fact sheets should also be a condition of receiving and retaining a GLAA licence (GMB believes that the GLAA licence work should be extended)

Question 3

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

Yes.

Question 3 (a);

If yes, how do you think this should be achieved?

Employment businesses, umbrella companies and intermediaries should arrange to meet face-to-face with work seekers when they first register with the firm. Such meetings will provide a good opportunity for the companies to explain the key facts sheet and to inform the work seeker of the terms under which they will be offered work. This will also help the company to get to know and build a good working relationship with the individual. The government should include advice on the benefits of meetings and information about cooling off periods on template forms.

Question 4

BEIS has estimated the cost of a new information document to be between £33,000 and £1 million over a ten-year period. This is based on the assumption that it will take up to one hour to produce a key facts page.

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

Yes

Question 4 (a):

If too high or too low, please provide reasons for your answer below.

This information should be part of normal compliance activities. Producing fact sheets should therefore not create significant additional administrative duties. Businesses will need to invest some resource in the preparation of an initial fact sheet. The government could assist the recruitment sector by preparing online template forms.

Question 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?

Question 4 (c)

If yes please provide further details below:

This should be part of normal compliance duties and thus give rise to no significant

SECTION 2

Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain

Question 5

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

No.

Question 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.

GMB believes that there are no benefits for agency workers using an umbrella company or intermediary. Businesses sometimes claim that employment through an umbrella company benefits agency workers as they are more likely to be employed on a contract of employment and therefore to qualify for the fuller range of employee

rights. However, most employee rights only apply once an individual has sufficient continuity of employment (2 years in the case of unfair dismissal protection and statutory redundancy pay). Individuals' access to such rights therefore will depend on whether different agencies and end users will agree to engage the same umbrella company when the agency worker moves to a new assignment. This is unlikely as in our experience it appears that agencies and end users tend to use their preferred supplier. Some of the common problems that arise in this area are as follows:

- Lack of transparency and misinformation about pay rates: Individuals are often misinformed about how much they will be paid, with workers frequently not receiving the advertised rate of pay or the rate that was agreed with the employment business. The hourly or daily rate for the agency worker which is agreed with the employment business is paid to the umbrella company, but as the umbrella company's income. The umbrella company then deducts their administrative costs and sums to cover employers' National Insurance Contributions, pension contributions, and holiday pay (as the umbrella company is the employer). The remainder is then classed as the work-seeker's gross pay, from which income tax and employees' National Insurance Contributions are deducted, with the work seeker receiving the resultant net pay.
- The involvement of umbrella companies drives down pay for agency workers: Employers who decide to use agencies to supply workers will inevitably incur agency fees. As GMB understands it and as reported in Recruitment Industry Trends for 2015/2016 this can on average amount to 16.5 per cent of the costs of any assignment. The fee can be much higher as other unions, for example in teaching, report that the figure can be as high as 40%.
- Where umbrella companies are engaged, the amount of the pay bill available for agency workers may be further reduced due to the umbrella company's profit

margin which is also deducted from the wages earmarked for agency workers. In many cases the agency worker will not aware of this, so the pay rate they've agreed with the employment agency is not reflected in their final pay packet.

These problems could partly be addressed if the law was amended to ensure that the contractual rates agreed between the recruitment agency and the umbrella company had to include an uplift reflecting any administrative fees charged by the umbrella company as well as any employer's national insurance and other related costs which may be deducted.

- The involvement of umbrella companies increases the length and complexity of the supply chain making it harder for individuals to enforce their rights. The use of umbrella companies inserts another link in the chain between the agency worker and the business hiring them to do work. This is another link which transfers risk and responsibility away from the hirer and employment business.

Question 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)

- 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?**
- Be limited 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 workseeker has not**

agreed to, and failure to provide written terms and conditions before the assignment starts?

Please provide reasons for your response

GMB believes that umbrella companies operating in the recruitment sector should be regulated on the same basis as employment businesses and employment agencies. The extension of the Conduct Regulations to umbrella companies would mean that individuals employed through umbrella companies receive the same level of protection as other agency workers.

The Conduct Regulations should also be amended to include additional provisions relating to umbrella companies including:

- Any contractual rates agreed between the recruitment agency and the umbrella company should include an uplift to cover any administrative fees charged by the umbrella company, as well as any employer's national insurance and other related costs which may be deducted from the agency workers' pay.
- Work seekers should have the right to decide whether they wish to be employed via an umbrella company or not. Where they decline, they should not suffer any detriment, including missing out on offers of future assignments from an employment business.

If the remit of the Employment Agency Standards Inspectorate (EAS) is to be extended, it is important that they are provided with additional resources.

GMB believes that the EAS's enforcement strategy should be substantially strengthened. GMB's experience is that EAS regularly fail to take effective

enforcement action in response to complaints, including where GMB has reported that agencies have supplied agency workers to replace striking workers in breach of regulation 7 of the Conduct Regulations 2003.

GMB notes that the EAS only pursued one successful prosecution and one application for a prohibition during 2016/17 and that correspondence with agencies remains the main method of “enforcement”.

The TUC believes that the penalties for non-compliance with agency workers' rights should also be increased:

- Agencies and umbrella companies which breach minimum standards should be required to pay increased fines and full compensation to work seekers.
- Public procurement rules should be adjusted to ensure that agencies and umbrella companies which breach agency workers' are excluded from being awarded public contracts.

Question 7 (a):

Thinking about worker seekers and employers in the recruitment sector, would ensuing umbrella companies provide workers with a key facts page have an impact on individual work seekers and employers in the recruitment sector?

i) individual workseekers

Requiring umbrella companies to provide work seekers with a key facts sheet may also have a small positive impact for individual work seekers.

GMB believes that practices in the recruitment sector have become increasingly lacking in transparency, especially where umbrella companies are involved.

Agency workers are often unaware who their employer is or whether an umbrella company is involved in their engagement, making it difficult for them to enforce their rights. Individuals are also likely to be unaware how signing up with an umbrella company may affect their take home pay or the rights to which they are entitled in the workplace.

Some may be tempted into signing a contract with the umbrella company on the promise of more take home pay as umbrella companies are able to offset their travel and work-related expenses against national insurance contributions (NICs). Individuals may not be aware that some of these practices may be unlawful and not appreciate that they may lose out on future contributory-based benefits, such as statutory maternity pay, statutory sick pay and their state pension.

Work seekers, employed via umbrella companies, are often misinformed about the rate of pay they will receive or the level of deductions which will be taken from their pay to cover employers' national insurance contributions and to cover the umbrella company's profit figures. There is often a significant gap between the advertised rate of pay for an assignment and the wages eventually paid to agency workers. Such deductions lead to lower rates of pay for agency workers. They can also lead to non-payment of the national minimum wage in some cases.

GMB believes that by requiring umbrella companies to provide work seekers with additional information this may assist in improving transparency. But, increased

information, on its own, will not prevent the wider abuses that can be experienced by work seekers employed via umbrella companies.

GMB believes that some of these issues could be addressed through a requirement being introduced through the Conduct Regulations to include an up-lift for fees and employer's national insurance.

ii) The Recruitment Sector

Requiring umbrella companies to provide work seekers with a key facts sheet may also have a small positive impact for the recruitment sector.

This will improve compliance and mean that reputable organisations will be less likely to face unfair competition from unscrupulous organisations.

Question 7 (b)

Thinking about work seekers and employers in the recruitment sector, would extending the regulations to cover umbrella companies have on individual work seekers and employers in the recruitment sector?

1. The workseeker

Extending the Conduct Regulations, enforced by the Employment Agencies Standards Inspectorate to umbrella companies may also have a small positive impact for individual work seekers.

It would mean that work seekers employed through umbrella companies have the same rights as other agency workers, including rights to:

- be paid in time and on full

- be informed about their pay and other working conditions in advance of any placement with an end user
- not be charged for any work seeking fees
- refuse wider services and charges levied by agencies, without suffering a detriment

ii. Employers in the Recruitment sector

Extending the Conduct Regulations, enforced by the Employment Agencies Standards Inspectorate to umbrella companies may also have a small positive impact for the recruitment sector.

The extension of the Conduct Regulations to umbrella companies will help to create a level playing field within the sector and to ensure that reputable businesses are not undercut by unscrupulous organisations.

SECTION 3

Ensuring the Swedish Derogation is used appropriately

Question 8

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

No.

Question 9

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

GMB welcomes the government's long overdue review of the 'Swedish derogation' in the Agency Worker Regulations. For many years, GMB, the TUC and other unions have called for the derogation to be repealed. The derogation is being used to mistreat agency workers and to drive down pay and conditions. In 2013 the TUC complained to the European Commission that the UK government had failed properly to implement its obligations under the Temporary Agency Worker Directive.

GMB draws attention to the TUC Report published in March 2018 entitled: *Ending the Undercutters' Charter: Why agency workers deserve better jobs.*¹ This report confirms that agency workers are experiencing widespread abuse because of the derogation. The key findings from the TUC report can be summarised as follows:

Reduced Pay

Agency workers employed under the Swedish derogation suffer a significant pay penalty with some agency workers earning up to £4 less per hour than directly employed staff even though they do the exact same work with the same level of responsibility.

Working Anti-Social Hours

Agency workers need to work overtime and anti-social hours to make up for the shortfall in their wages packets, but often face a bigger pay penalty when doing so. As the TUC report notes:

- For example, in one food manufacturing plant, agency workers earn nearly £3 less per hour than directly employed staff when working weekday night shifts.

Agency workers on Sunday daytime shifts earn £7 per hour less per hour, whilst, Sunday night working brings a pay gap of £6.33 an hour.

- In the same factory, agency workers miss out on enhanced overtime rates. When working extra hours agency workers continue to be paid £7.53 an hour, whereas core staff receive a 50 per cent premium for over time, being paid up to £17.06 an hour.

GMB believes that employers thus have a clear incentive to use agency workers on Swedish derogation contracts to cover longer shifts and anti-social hours agency workers to achieve significant savings and undercut the pay and conditions of their main permanent workforce.

A Licence To Under Cut

Employers and agencies are exploiting the Swedish derogation to employ agency workers on a long-term basis to reduce their wages' bill and to undercut the pay and conditions of permanent staff. This view is reinforced by the report by HOST Policy Research to BIS (BEIS) in 2015 entitled *"Qualitative Analysis of the use of Pay Between Assignments contracts for Agency Workers"*.

The types of reasons given for using the derogation by agencies, hirers and umbrella companies include:

- It cuts costs and means hirers and agencies can avoid enhanced pay rates for agency workers
- It is the best way to maximise revenue and to minimise risk
- The avoidance of pay parity
- It was the surest way of hirers and agencies to ensure compliance with the AWR
- It reduces administration

- It avoids the need to identify possible comparators in the hirers' firm
- The hirer does not need to disclose their pay rates.

As GMB understands it there is no mention of the improvement of the conditions of agency workers from any of the parties interviewed for this Government research.

No choice

The government's consultation document on the Taylor review recommendations on agency work suggests that agency workers can choose whether to opt-in to the Swedish derogation. As our experience there is in reality little choice. If a worker does not sign up they do not get the work or face being sacked if they do not sign up between assignments.

Question 10

In your experience, how effective do you think pay between assignment contracts are in supporting workers when they are not working?

Not at all effective

The consultation paper reports the CBI as arguing that workers give up the right to equal pay on the basis of a stable relationship with one agency and greater security (with the promise of pay between assignments). GMB does not support this view. Agency workers rarely receive pay between assignments in practice. This is partly because agency workers employed on Swedish derogation contracts are often hired by the end user on a long-term basis, in place of a permanent workforce.

Recently published research, commissioned by the government, by HOST Policy Research indicates that any monies that are paid to agency workers between assignments do not amount to an extra benefit for agency workers. Instead they are deducted from pay they would otherwise receive for doing the job. Here are some of the findings:

The report revealed for example that:

- Seven of the 11 umbrella organisations interviewed revealed that they use some form of 'roll-up' deductions from the salaries of workers on PBA contracts (pay between assignment contracts - otherwise known as Swedish derogation contracts). This means that a figure is calculated at each salary payment proportionate to the possible PBA payments and held in reserve.
- One umbrella company offered workers the choice of being paid the money up front in return for waiving their right to pay between assignments: 'it is up to the worker to decide which they prefer'.
- At least two umbrella companies reported deducting an amount for PBA from the worker but then paying them the same amount in the form of a loan; in the event of PBA being triggered, they would pay out but also require repayment of the loan: 'the net effect is always zero.'

The research also includes evidence from an umbrella company which chose not to use agency contracts. The research states that this agency:

"...does not offer PBA [Pay Between Assignment - or Swedish derogation] contracts because they view them as a way of avoiding the equal pay aspects of AWR which is unfair to workers as well as increasing the risk to themselves in terms of compliance and tax liability.... They suggest that pay between assignments is not a

benefit for workers as organisations will simply calculate a deduction from this from the hourly rate in the same way as holiday pay is calculated. However, in their experience any workers will never receive any pay between assignments..." (See page 12 of the Report).

Question 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 facilities, rest break, annual leave or job vacancies?

Yes.

As the TUC Report Ending the Undrercutters Charter: Why Agency Workers Deserve Better Jobs indicates , agency workers on Swedish derogation contracts often receive significantly fewer paid holidays than workers on a regular contract doing the same job.

For example:

- In agency workers on PBAs miss out on an extra 4 days paid holidays a year.
- In a food manufacturing factory, core staff are entitled from the start of their job to 26 days leave plus 8 days bank holidays. They receive an additional two days' leave after 10 years. In contrast, agency workers receive just 28 days leave.

This suggests agency workers are missing out on equal treatment on holidays, even though regulation 10 of the AWR only exempts agency workers from the right to equal treatment on pay, but not for other basic working conditions, including holidays and working hours.

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

No. GMB believes the derogation should be repealed. GMB believes that better enforcement cannot remedy the abuses experienced by agency workers or protect them from future mistreatment. GMB therefore supports the recommendation of the Taylor Review that the Swedish derogation should be removed as a matter of urgency.

Question 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?

GMB believes the responsibilities of the Employment Agency Standards inspectorate (EAS) should be expanded to include the AWR. However, an extension in the EAS remit must be accompanied by a substantial increase in funding.

