RESPONSE to CONSULTATION on AGENCY WORKERS RECOMMENDATIONS

30th April 2018

PREFACE

TEAM (The Employment Agents Movement Ltd) is the UK's largest network of independent employment and recruitment agencies. We have been trading for over 20 years and currently have a network of over 700 locations and a combined turnover of over £1.5 billion.

By definition we are not a trade association, but endeavour to provide assistance and guidance to our membership and a trading platform to facilitate networking across all locations and sectors. Our membership has been advised of this consultation and the matters raised at various Member meetings and they have been urged to respond directly as appropriate. Our response is based on an overview of Member experiences and comments.

SECTION 1

Improving the Transparency of Information Provided to Work Seekers

By way of explanation, TEAM provides a 'library' of over 200 documents. This information is referenced by responses to legislation or best practice and updated on a regular basis. Many of them are in template format, allowing Members to adapt for use in their own business. Whilst they are not mandatory we are aware that many are in successful use around the membership.

We believe it essential that work seekers have a clear understanding of both their rights, what may be expected of them and what they may expect in return and TEAM provide a comprehensive suite of documentation to assist in this process. We can provide full copies of every document, but this may be confusing. Instead, we have attempted to highlight the significant elements of the process and provide appropriate model documents.

Whilst we are concentrating on the work seekers experience, we would make the obvious point that there are many matters and information relating to the client employer, the workplace, the job function and various terms the recruiter is already required to investigate and agree when accepting any job vacancy. The following is a suggested 'best practice' guide:

1. All work seekers, upon making an enquiry of a recruiter, should be provided with a Handbook/Worker Guidelines that provides easily understood information on their rights and the likely process they will encounter. The information provides guidance for both permanent and temporary work seekers.

TEAM Tool Box TB 8
Rev 11 - Job Seeker I

2. Every work seeker should be required to complete an Application Form alongside them supplying various statutory documentation, e.g. Entitlement to Work, etc. Their signature on the Application Form also alludes to them having been supplied with the relevant explanatory Handbook.

TEAM Tool Box TB
27 Rev 1 - Applicatio

N.B. Whilst not a mandatory process, the majority of TEAM Members would, as best practice, expect to personally interview job seekers. Therefore, it would be expected to additionally discuss due process directly with the individual.

3. On being selected and offered a suitable temporary work assignment, the terms applicable to that specific vacancy and that individual worker will be detailed on a single page document. This information will be supplied to the work seeker PRIOR to the assignment commencing. (It should be noted that a similar document detailing the individual worker is supplied to the client employer at the same time.)

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33 Rev 0 - Confirmat

4. At the time a work seeker agrees to accept an assignment from an employment business they will be issued with a Contract for Services together with any other relevant information.

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19 Rev 10 - Contract

Observations

- The above precis of what we consider to be an informative and transparent due process is not difficult to understand or implement. We would challenge your impact assessment on costs, as the majority of the information is readily available or is already a statutory requirement. The use of templates and current CRM systems would/should make such information instantly available to work seekers. We would welcome the inclusion of such a process within the Conduct Regulations.

- Whilst traditional, professional recruiters would not deem this process burdensome we are aware that due process can now involve various intermediary bodies. The consultation refers to 'umbrellas'. However, it should be noted that there are other business models (and no doubt there are new ones being dreamed up!) and many specifically purport to be not covered by employment/recruitment agency legislation. This may require a fundamental change in how employment/recruitment businesses are defined and would no doubt benefit from wider consultation. If all businesses 'involved' in the chain of provision of labour between an employer and worker were included then, for example, straightforward outsourced payroll providers,

engaged by the recruiter to calculate and provide payslips may become unwittingly involved in a process they have little or no control over.

SECTION 2

Extending the Remit of the EAS Inspectorate to Cover Umbrella Companies and Intermediaries in the Supply Chain.

1. By way of explanation, TEAM provides its agency network with a selection of what are termed to be Service Providers (SPs). These businesses are invariably recommended to TEAM by existing Members and are individually reviewed by the Directors. Membership is by invitation and limitations are imposed on the sectors supplied. In the case of the intermediary sector, additional compliance requirements are required and we reprint our advice to Members below.

   "COMPLIANCE

   Particular attention should be paid when TEAM Members seek services from businesses providing contractor support, accounting, payroll, umbrella and other related services within the financial arena. Compliance requirements in this area are complex and recent case law has highlighted potential areas of concern for agencies, contractors and end user clients alike. In particular non-compliant salary sacrifice schemes, NMW abuse and inappropriate travel and subsistence schemes. Many such businesses exercising best business practice have sought external independent audits of their compliance with applicable UK legislation and taxation and in certain cases reports on these reviews are made available to TEAM Members. TEAM believe the audits conducted by either Saffery Champness, FCSA (Freelancer and Contractor Services Association) or Professional Passport should provide Members with a reasonable level of assurance; other reviews may also provide similar assurance. Where TEAM are aware of such reviews they are highlighted accordingly against the relevant Service Provider's entry in our directory. Additionally, a useful guide for Members working with such businesses can be found in the Documents area of the website. There are a variety of 'platforms" for a contractor to choose from and, in our opinion, the choice should not be based solely on the perceived "best" return. The personal circumstances of the contractor and the assignment require appropriate research and Members are advised to consider creating a PSL from our list of TEAM Service Providers that can provide their contractors and clients with suitable reassurance."

2. TEAM addressed this area in our submission on the Labour Market Enforcement Strategy and, given that our position remains unchanged, we also reprint this below. There may need to be further discussion on defining 'intermediary', but we do support the initiative that such relevant businesses involved in a worker supply chain should be subject to regulation.

   "There are many questions raised in the report that basically relate to how certain matters can or should be enforced. We have concerns as to how effective 'self-regulation' works and our position is that there should be a more robust alternative to regulating all labour providers. TEAM has long believed that the industry should be licensed and that, in effect, the remit of the GLAA (or some

authority similar to it) should be extended to cover all and any parties involved in the provision of labour or work related services. As an example, there has been a significant increase in the volume of intermediary business models in recent years (whether badged as 'umbrella' businesses, master or neutral vendors, resourcing platforms, amongst others) inserting themselves into the employer, agency, worker relationship but promoting the fact that they are not a recruitment or employment business and therefore generally not covered by relevant legislation. Innovative new processes that positively assist such relationships can be welcomed, but in many instances, these have been based on 'contrived schemes', often based on altering a worker's employment status to derive 'savings' on their tax status. Whilst recent legislative changes are seeking to close such 'loopholes' we remain concerned that either they have not gone far enough and/or there still remains too much confusion and inconsistency."

We believe an industry reported to be worth more than £30 billion per annum could and should be capable of generating annual licence fees that would facilitate appropriate and meaningful enforcement. Whilst it is understood that licensing in the current GLAA sectors hasn't eradicated malpractice, it is certainly a better place for it. Generally, it would be accepted that most business would seek less legislation and Government intervention. However, there is considerable groundswell from the majority of professional recruiters that the industry and the protection of workers' rights require a more rigorous and fundamental approach.

SECTION 3

Pay Between Assignments

1. The provision of Regulation 10 may not have been designed as a 'loophole', but anecdotal evidence would suggest that this may be what certain businesses are doing. Below is a TEAM article from 2012 following the introduction of the AWR. In our opinion little has changed in the intervening period. The consultation considerations suggest that either the exemption is repealed or AWR compliance is placed under the remit of the EAS in an attempt to elicit further information. Unfortunately, both these actions are being suggested based on little or no factual evidence. Attempting to investigate PBAs in isolation we don't believe will produce any, or at best very little, useful data. In practice workers will either not be aware of their full rights or who to complain to, agencies or intermediaries failing to comply are not being investigated and many employer clients may be unaware of the AWR. There would need to be considerable investigation of agency and intermediary records with particular regard to length of assignments compared to client records. For example, results of many 10/11 week assignments to clients with long term requirements would suggest systemic abuse of the 12 week rule. The AWR contains anti avoidance provision, but if workers aren't adequately aware of their rights (and/or are concerned at what happens to their work prospects if they do complain) and no one else is actively checking for compliance, then it is perhaps not surprising that there is little evidence of non-compliance. In practice, every supply of temporary workers should require the supplier to have requested AWR information from the employer, which should be a matter of record. In the short term we might suggest that placing the AWR under the remit of the EAS, subject to this including Intermediaries (whatever the definition), would be better than doing nothing. However, we strongly suggest that the AWR as a whole should be the subject of consultation and review. For example, we believe that many of the positive elements could be moved to the Conduct Regulations and other matters repealed.

Given the AWR is an EU Directive and the UK is involved in Brexit this would need to be more of a long term aim.

"AWR.....COMPLY OR DIE?

.....well not quite! However, considering some of the 'hysteria' that has appeared in recent months it might appear that the world of work will be grinding to a halt anytime soon!

If we strip away some of the hype, at the heart of the Directive lays a requirement in its simplest form to treat agency supplied temporary workers fairly and to provide them with certain similar equal rights to comparable workers. Seems on the face of it fairly reasonable until one examines some of the phraseology and detail provided in the paperwork. We were provided with what many saw as a fairly poorly drafted Directive from which stemmed an equally deficient set of Regulations. It is perhaps easy with the benefit of hindsight to suggest that the Directive should have been dealt with earlier. It first surfaced in 2002 and whilst many made their representations clear at the time to the Government of the day the matter was clearly put on the 'back burner' and the UK left implementation until almost the last minute. Whilst the Department for Business Innovation and Skills (BIS) did their best to produce AWR Guidelines it should be noted that these did not and have not changed the Directive; they remain what they are..... a set of guidelines based upon an interpretation and in the final analysis, if challenged, it will be for an appropriate court to decide whether they have been interpreted correctly. It was perhaps sadly telling that John Cridland, Deputy Director-General of the CBI was quoted, following the final consultation with the TUC that ".....these proposals represent the least worst outcome for British business....." not the most auspicious announcement of legislation that affects over 1,000,000 workers and hundreds of thousands of businesses. Given that a workforce is perhaps the most valuable resource any business has, operating in such an environment is hardly conducive for efficient business planning!

What then should the end user client and agency do? ..... put simply they should seek to comply. Sadly perhaps, many are and have been 'diverted' by various claims that this or that Regulation can be interpreted to mean that the Regulations can be avoided ..... it won't.... and for some it may prove to be a costly mistake. Some agencies have changed their entire business model, e.g. seeking to employ their temps on permanent contracts believing that use of the derogation in Regulation 10 is 'best for the agency'. In practice they should have considered firstly the client's requirements as well as those of the workforce. Attempting to 'force' workers into a specific employment contract without effective communication, particularly if it's for the sole purpose of avoiding equal pay, will hardly endear those workers either to the agency, or the end user client. The better informed will focus on the key areas of the Directive and will construct a service that not only delivers what the client requires but will also comply with the legislation. The Directive cannot be implemented unless both client and agency supply accurate information to each other and this is effectively communicated to the workforce. To do this, both parties need to understand their obligations, ask the right questions and discuss and agree what checks and balances need to be provided; something not too dissimilar to a simple critical path analysis. Agencies by now should have developed a checklist that enables them to address with the client the various key elements of the AWR so that a detailed cost analysis and feasibility study can be produced. It is of concern that even though these Regulations became effective from 1 October 2011 many end user clients and agencies have yet to implement any procedures. Given, for example, that these Regulations include a requirement for clients to be responsible for two elements of 'Day One Rights', i.e. all workers should be given access to comparable facilities and amenities and the ability to apply for comparable vacancies, may mean that already some hirer clients are falling foul of the legislation. On the plus side, this requirement to conduct an information exchange should provide

for a more professional and understanding relationship between client and agency. Whilst there may well be sensible areas that judicious planning could assist in some mitigation of the Directive, in the main there is no quick fix or magic loophole; better for all to face up to what is now law and react accordingly."

2. For information the TEAM AWR Guidelines (which includes advice on Regulation 10) are available here:

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11 Rev 15 - Agency V

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