



LEEDS CITY REGION
ENTERPRISE
PARTNERSHIP



Date: 9 May 2018

Subject: **The Taylor Review Of Modern Working Practices:
Consultation On Agency Workers Recommendations**

Submitted by:

We welcome the opportunity to comment on the Government's response to the Taylor Review into Modern Working Practices, in this case with regard to the recommendations on agency workers. Our remarks mainly focus on the broad thrust of the Government's proposals rather than the detailed technical questions raised in the consultation document.

Background to the Leeds City Region

Our vision for the Leeds City Region is for a strong, successful and globally recognised economy where everyone can build great businesses, careers and lives. In working to achieve this vision, we have identified four linked key challenges that the city region needs to address:

1. The City Region's productivity gap with national and international peers is too large and growing;
2. Investment, particularly private sector investment in research and development, is too low;
3. Living standards in the City Region have stalled; and
4. Stubborn deprivation persists.

We know that productivity and living standards are closely linked, and therefore improving productivity in the Leeds City Region to be in line with the national average would be a significant contribution to a bigger, more inclusive UK economy. The potential prize in Leeds City Region could be:

- Growing the economy by £10bn
- Reducing the number of jobs paid below the living wage from 25% to 15%
- Decreasing the dependence of the region on the UK Exchequer
- Building greater international competitiveness and unlocking new opportunities
- Increasing R&D spending to meet the UK aspiration of 2.3% of GVA.

One of the core issues we will seek to address through our forthcoming industrial strategy concerns boosting productivity and earning power – the core focus of the government's Industrial Strategy white paper. Within this we will consider the concept of **good work** and how best to promote it across the City Region as part of a general commitment to inclusive growth. There is evidence to show that employers who offer good work reap a benefit in terms of increased productivity and we see "people powered productivity" as a significant lever for achieving our wider objectives.

General comments

It is clear that the ingredients of good work extend beyond pay levels to include a wide range of aspects including security and rights. Clarity in the law and transparency of entitlement is critical to ensuring that workers' rights are respected.

"Atypical" and flexible forms of employment such as agency working have grown in prominence in recent years. It is essential that these modes of employment offer the same opportunity for good work as mainstream full-time work. There is strong evidence that most workers in flexible forms of employment welcome these arrangements. However, the Taylor Review highlights that agency workers sometimes find themselves in a position of vulnerability and we welcome the government's acknowledgement that this justifies enhanced protections for this group.

As the Taylor Review makes clear, no reasonable employer has anything to fear from embracing the good work concept in practice. Indeed, it is vital to provide a level playing field, to prevent responsible employers from being undercut by less progressive businesses, prompting a "race to the bottom". We should aim for a situation where competition is founded on characteristics like creativity, innovation and customer service rather than on "gaming the system", if we wish to boost productivity and pay.

We broadly welcome the Government's emphasis on further evidence gathering and consultation in order to shape its ultimate response to the recommendations raised by the Taylor Review. We see this as being consistent with the principle of evidence-based policymaking, particularly since responses to the Taylor Review in some cases present evidence that runs contrary to the recommendations of the review (see below).

However, the process of further consultation needs to be conducted in a timely manner, to ensure that where the systemic weaknesses in the treatment of agency workers suggested by the review are confirmed, appropriate action can be taken quickly without such problems being prolonged unnecessarily.

Improving the transparency of information provided to work seekers

The Taylor Review recommended that the 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.

We welcome the government's acceptance of this recommendation, since it is a basic right that work seekers, when deciding whether to accept a contract, should have sufficient clear information to understand who is paying them, what deductions are being made and for what reason.

The inclusion of a key facts page in contracts between a work seeker and an employment business is a suitable way of re-affirming the current legal position and strengthening provision e.g. around who is responsible for employment of the work seeker. This will undoubtedly create a burden for employment businesses who are required to create these new documents but it is reasonable that work seekers should be provided with clear information and that fundamental aspects should not be buried in the small print of long contracts.

Regulation of umbrella companies

The Taylor Review recommends that the incoming Director of Labour Market Enforcement should consider whether the remit of the Employment Agencies Standards (EAS) Inspectorate ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain. The Review cites evidence of workers being compelled into these arrangements or being signed up to them with the detail hidden in the small print of a contract, leading to a lack of transparency around pay rates and who their employer is. Moreover, lower-paid workers can be subject to significant admin fees through an umbrella company in a way that would be unlawful if the deductions were imposed by an employment business.

The lack of robust data on the number and impact of umbrella companies in the recruitment sector means that the government's detailed consultation on this issue is warranted.

We welcome the government's proposed approach in this area, which is founded on an increased emphasis on enforcement via the EAS rather than relying on individual workers to pursue complaints through an employment tribunal. It is justifiable to bring umbrella companies in line with the minimum requirements currently in place for employment businesses. As the consultation suggests the extent of regulation will need to take account of the potential cost implications for umbrella companies and, ultimately, for hirers and workers themselves.

The "Swedish Derogation" and extending the remit of the Employment Agency Standards (EAS) Inspectorate

The Taylor Review recommended that the government should repeal the legislation that allows agency workers to opt out of equal pay entitlements in return for a "pay between assignments" (PBA) contract (the 'Swedish Derogation'). This view was supported by the Work and Pensions and Business, Energy and Industrial Strategy Committees. The basis for this recommendation is evidence that some employment businesses and umbrella companies unlawfully force workers to accept these contracts in order to pay them a reduced wage or that they avoid paying workers between assignments.

The Taylor Review highlighted evidence of the "quite widespread" nature of these abuses and argued that legitimate uses of the Derogation were not sufficient to justify its continuation. However, the government points to a lack of robust information on the number of people on PBA contracts and the extent of abuse of such contracts. There is also contrary evidence from the CBI and others to suggest that the current arrangements are largely beneficial and allow workers to form a stable relationship with one agency, affording them greater security. From this perspective it is argued that the repeal of the derogation would limit the options for agency workers and generate administrative costs for law-abiding businesses.

The problem of the abuse of the Swedish Derogation appears to be largely one of a lack of enforcement. Structuring contracts to avoid equal pay is an explicit breach of the regulations but the regulations cannot currently be enforced by the Employment Agency Standards (EAS) Inspectorate due to a lack of resources; instead, agency workers rely on the employment tribunal system. It seems clear that **the focus should be on enforcement via the EAS rather than repeal, subject to the**

government consultation confirming that there is substantial legitimate use of payment between assignments.

Such a focus on enforcement would also mean that the EAS could **provide oversight of the Agency Workers Regulations**, including day one statutory and contractual rights and rights accruing after 12 weeks, ensuring that workers receive rights such as access to workplace facilities and other basic working conditions such as annual leave. **We welcome such an approach** since it would shift the burden for enforcement of rights from work seekers, via a tribunal, to an enforcement body, increasing the likelihood that workers receive the rights to which they are entitled.