

United Kingdom Homecare Association
The professional association for homecare providers



Department for Business, Energy & Industrial Strategy,
Labour Markets,
Spur 2,
1 Victoria Street,
London,
SW1H 0ET

9th May 2018

**Good Work: The Taylor Review of Modern Working Practices:
Consultation on agency worker recommendations**

Dear Sir or Madam,

Thank you for the opportunity to respond to the above consultation, which we have the pleasure to do on behalf of the United Kingdom Homecare Association (UKHCA).

UKHCA is the national professional association for organisations across the UK who provide care, including nursing care, to people in their own homes. Our mission is to promote high quality, sustainable care services so that people can continue to live at home and in their local community.

Please do not hesitate to contact our team if you require any additional information.

Yours faithfully,

Veronica Monks
Policy Officer

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

Agree strongly

1 (a): If slightly or strongly agree, what key facts do you think should be made prominent?

The arrangements for paying the work seeker should be prominent along with rates of pay, deductions, and any benefits.

1 (c): Thinking about work seekers and employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a: significantly positive impact, small positive impact, some negative and some positive impact, small negative impact, significantly negative impact, no impact, don't know?

The key facts page will have a small positive impact for workseekers and a significantly negative impact on Employers in the recruitment sector.

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

In addition to the information suggested in the consultation document, it will be important to supply contact details in case of queries or complaints about pay and deductions.

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?

The provision of a key facts page should be a regulatory requirement

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

No. The responsibility for understanding the key facts should lie with the work seeker.

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

About right

7: Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activities of umbrella companies and intermediaries in the supply of work seekers to a hirer;

i. Be limited to the regulation of the key facts page and provision of information relevant to those facts as part of a work offer by the hirer or employer?

Yes

ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework such as non-payment of wages, deductions from wages which the work seeker has not agreed too, and failure to provide written terms and conditions before the assignment starts?

Yes

7(a): Thinking about work seekers and employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a: significantly positive impact, small positive impact, some negative and some positive impact, small negative impact, significantly negative impact, no impact, don't know.

The key facts page will have a significantly positive impact for workseekers and a significantly negative impact on umbrella companies in the recruitment sector.

7(b): 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: significantly positive impact, small positive impact, some negative and some positive impact, small negative impact, significantly negative impact, no impact, don't know.

Extending the regulations will have a significantly positive impact for workseekers and a significantly negative impact on umbrella companies in the recruitment sector.

[ENDS]

This is the response to the 'Consultation on agency workers recommendations' by the **Serocor group**.

We are a mid-sized group of recruitment agencies, encompassing a boutique recruitment business, an executive search business, an RPO business and a transactional recruitment business focusing on IT, Engineering and Defence.

Consultation questions and Responses

Are you (select the appropriate option):

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Employer
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Trade union or staff association
X	Other (please describe) Employment Business (please note this is NOT the same as Employer as we do not employ our temporary workers/contractors)

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

Not Applicable

If you are an employer, how would you classify your organisation?

We are not an employer, we act as an Employment Business as defined by the Conduct Regulations. This does not mean we employ our temporary workers

Private sector organisation	YES
Public sector	
Charity/voluntary sector	
Other (please specify below)	

If you are an employee or worker, what type of organisation do you work for?

Not applicable

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

Micro-business (0-9 employees)	
Small business (10-49 employees)	
Medium-sized business (50-249 employees)	YES
Large-sized business (250+ employees)	

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

Not applicable

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

Not applicable – we are responding as an Employment Business

PLEASE NOTE we are assuming that when you refer to 'employer' throughout this document you actually mean 'engager' or 'agency'. The use of the term 'employer' is very problematic. Most agencies do not employ their temporary workers, they are either self-employed or 'Limb (b) workers' as defined in the Employment Status consultation currently out in the public domain. Even agency PAYE workers are not 'employees', and most temporary workers in the UK are not agency PAYE.

We will therefore assume every reference to 'employer' means 'engager', such as an agency, rather than and 'end user' or 'Hirer', which is the company who receives the services of the worker.

Section 1: Improving the transparency of information provided to work seekers

Work seekers are people or limited company contractors contracted by employment businesses, intermediaries or umbrella companies and who are placed with a third-party to carry out 'temporary agency work'.

A key facts page could include the following additional information:

- a) Who will be responsible for paying the work seeker , and how they are being engaged;
- b) What happens to any money paid to an umbrella company or intermediary before it is paid to the work seeker;
- c) How much the work seeker will be paid by the umbrella company or intermediary;
- d) What statutory deductions will be made;
- e) Any other fees, costs or charges that will be deducted;
- f) What additional benefits there are e.g. access to a benefit in kind scheme, childcare vouchers, group insurance policies.

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

Agree strongly	Agree slightly	Neither agree nor disagree	Disagree slightly	Disagree strongly	Don't know
				X	

1(b): If slightly or strongly disagree, please provide reasons below

Our main concern is the assumption by BEIS that all temporary workers have no options or choice as to assignments – whether that relates to assignment length, pay rate, type of payroll vehicle (PAYE, umbrella, self-employed, limited company etc). It has been assumed that all these considerations are already decided before any discussions with the worker. However in our experience that is rarely the case.

We believe that the vast majority of workers know how they are working, what their payroll model is, what that means and how much they will be paid. All good employment businesses and intermediaries already provide information to workers in a coherent, helpful way. An example of the 'Assignment Confirmation Schedule' that the Serocor group already uses is shown at Schedule 2. We believe almost all other agencies use something very similar. We also know that all the umbrella companies on our preferred supplier list provide detailed information to each worker about their assignment, pay, deductions etc as well as provision of clear payslips. Those that do not do so probably won't comply with the requirement for a Key Facts document anyway, so implementing this won't necessarily help the people that need it most.

If the 'real' issue is non-compliant or unprofessional agencies or intermediaries deliberately being opaque in their processes and payroll mechanisms, then better enforcement of the Conduct Regulations, AWR and other suitable legislation will have more impact than a Key Facts document.

Employment businesses are required to offer a PAYE option, and should as part of good practice, also be able to facilitate at least umbrella and limited company placements as well, depending on the worker's choice of payroll vehicle. Forcing workers into particular pay arrangements is much rarer than BEIS appears to believe, particularly as doing so can give rise to liability to agencies under other legislation (Managed Services Company, Criminal Finances Act, Enabling Legislation etc). Perhaps the best initial question in this consultation should have been:

"If you are an Employment Business, how many payroll options do you offer workers? What are those options? Are they always offered to all workers? How do you explain the different options to workers?"

At least then BEIS would have an understanding of what options are offered in the general sense, instead of assuming no options are. We appreciate that the recommendation has come from the Taylor Review but we believe a more detailed understanding of what is common practice now would have been a better starting point.

Any professional Employment Business will present all available payroll options to a potential worker, and refer them as necessary to other intermediaries to explain the specifics of any intermediary solutions (such as umbrella etc). The worker is then able to decide what type of payroll vehicle would suit them best for that particular assignment; once that is decided they are able to negotiate their pay rates accordingly (obviously not all assignments have variable pay rates, but many do).

What agencies do not do, and this is where the Key Facts document becomes particularly problematic for us, is break down the exact statutory deductions that are taken from the worker's 'gross' pay rate when they decide to use an umbrella, or their own limited company, or work as a sole trader. Our sales staff aren't sufficiently knowledgeable to discuss the intricacies and deductions of taxation for each possible payroll solution, and as individuals who are not financially or tax-qualified, it is inappropriate for them to do so.

Bearing in mind the Key Facts document envisages the inclusion of a break down of statutory deductions being made, how is a recruitment agency supposed to calculate and record this information in order to populate the document? And how do we deal with queries from workers about those deductions? We support all forms of transparency for workers, and expect our intermediaries to clearly explain what deductions are made, any why, and what that amounts to in terms of 'take-home' pay. But they are specialists in that type of solution, we are not.

The worker should be offered all possible payroll options by the Employment Business but ultimately make their own decisions. Employment Businesses have been accused in the past of providing tax or financial 'advice' to workers, by encouraging them to consider one payroll type over another. By implementing the 'Key Facts' document so early in the process (ie at registration), an unintended consequence is that you may force employment businesses to be more restrictive in the options they present to workers, just because the Key Facts document becomes too confusing when offering all the possible options (for a specific example of this in practice, please see Figure 1 at the end of this response document).

We do not deny that there are (a few, less than people think) employment businesses who will push workers into particular arrangements and have fixed pay rates because the margins are so tight etc. These agencies generally operate at the lower end of the labour market where job-seekers have less ability to negotiate their role, payroll type etc. Under these circumstances, a Key Facts document may be suitable. But if the employment business is already operating outside the acceptable level of good practice within the industry (by not offering a choice of payroll options), then we return to the same issue mentioned above that the agency will likely also not comply with the Key Facts document requirement either. If the problem is really only at the lower end of the market, BEIS should consider extending the Key Facts document only to those agencies with a GLA licence or similar.

When it comes to considering the Key Facts document in a fairly sizeable employment business, where workers are treated fairly and given options and do negotiate their rates etc, the only possible option for providing this document is **at the end of discussions, but before assignment start**. It cannot be provided to workers at registration, or even at the start of any discussions simply because of the amount of 'unknowns' at that stage of the process. For an example of how we believe the 'Key Facts' document would look like if sent out at the very start of the conversation, please see Figure 1 (at the end of this document).

As you will see from Figure 1, an employment business can send a document out at the start of every conversation, but it will have to cover every possible scenario of payroll and won't contain any specifics. If anything, we would argue that the document increases confusion for workers, rather than increasing transparency about their rights, benefits, pay etc. It also would be completely generic, the same for every person, which is easy from an administrative perspective, but undermines what the potential legislation is trying to achieve.

There are many good reasons why workers need / want choice of payroll options for particular assignments. For example, if a worker who normally operates via a limited company discusses a role with a recruitment consultant, and is told that it is a public sector assignment and Inside IR35, then the worker may choose to move to an umbrella solution for that particular assignment, and negotiate his rate accordingly. If that is the case, the worker then needs to engage with the umbrellas on the employment business' 'preferred supplier list' of umbrellas (almost all agencies have a PSL for umbrellas

due to the 2014 Intermediaries Legislation, Criminal Finances Act, POTAS etc) and work out which umbrella is right for them. Agencies cannot and should not push the use of one umbrella over another (other than the requirement that the umbrella must be pre-approved), therefore the worker needs time to make their own assessment of which umbrella to use.

Similarly, if a worker normally engaged via an umbrella discusses an assignment with a recruitment consultant and the nature of the assignment is such that the worker will not be able to claim tax relief on home-to-work travel and subsistence expenses, he/she may decide to work via the agency's own PAYE in order to avoid the management fee / margin of the umbrella company for that particular assignment (because agency PAYE is a free service).

There are many good reasons why workers might normally use one type of payroll vehicle, but switch to another for a particular assignment, and they will only decide that change much later in the process than the first conversation.

As a professional employment business, we want to offer our workers the most amount of choice, and therefore we would have to offer all the possible payroll options upfront in the 'Key Facts' document. If we could amend the timing of the Key Facts document to be sent out before the start of assignment, but not necessarily at the start of the discussions, then the information contained in the document becomes much more pertinent and helpful.

There is the option to send out a 'Key Facts' document assuming one payroll type, pay rate etc. But of course this is likely to be incorrect in over 50% of cases (almost all of our contractor negotiate their pay rate, even if they do not move away from their normal payroll method); this again means we would comply with the requirement but not the spirit of the consultation which is to increase knowledge and awareness, not cloud it.

Even if it is decided that the Key Facts document should be sent out at the end of discussions, but before the start of an assignment, there is some information that can't be included by the agency, and instead would require an intermediary to also send out a Key Facts document.

For example, if the worker chooses to use an umbrella company, we can tell them in the Key Facts document that the umbrella will deduct their management fee, but most umbrellas offer 2 types of umbrella employment, one 'basic' PEO-style engagement with no expense relief on any expenses, which has a lower management fee, and one 'umbrella' style engagement with tax relief on expenses (providing the worker passes the SDC test implemented in 2016 with the T&S changes), that attracts a higher management fee because of the additional work involved in processing the expenses.

Both options are completely compliant for tax purposes, and we encourage our umbrellas to offer both options in order that our workers are able to choose from the best possible solution for them. But the agency is not told which type of engagement has been agreed. If we were to be given the information, it would be difficult to store it in our existing database set-up, which means managing the information on separate spreadsheets or on paper, which adds to the time spent managing the requirement of the Key Facts document.

Similarly, we can tell workers that they will have the 'employment costs' deducted from the fee paid to the umbrella, but we don't know what pension contribution level that umbrella has, and without

knowing the expense tax relief arrangements, we don't know the 'gross' pay in order to calculate the Employer's NI, Apprenticeship Levy etc. And without the worker's tax code, YTD income and other information, we cannot calculate the income tax and Employee's NI etc. So we can include percentages or similar in the Key Facts document, but not exact amounts.

If however, the requirement for a Key Facts document was implemented, but the responsibility lay with **the company paying the worker** to produce it, that company would have all the necessary information about expenses, deductions, benefits etc that others in the supply chain may not know and even if they did, it would be administratively burdensome to keep updated.

The company paying the worker can still provide details of the agency's 'rate' (the pay rate paid by the agency to the umbrella), as well as all the deductions. That means the worker would still be able to check that the pay rate agreed between the worker and the agency is correct, and then see all the relevant deductions made to that rate to ensure he/she understands the 'actual' or 'take-home' pay rate. By moving the requirement to the company paying the worker, there is no loss of data or transparency – all the information that BEIS has suggested is included can still be included, just provided by a different party in the chain.

Therefore if the worker decides to go agency PAYE, the agency produces the Key Facts document. If the worker uses an umbrella, it is the umbrella company. Any other intermediaries (such as outsourced PAYE provider, outsourced partner for IR35 deductions, outsourced partner for CIS deductions) used by an agency would then be responsible for compiling and issuing the document.

If the EAS's remit was extended to include umbrellas as well as employment businesses, the enforcement of this requirement throughout the supply chain would be relatively simple as well, because it is the same government department policing both agencies and umbrellas.

Even if the Key Facts document responsibility was moved to the company paying the worker, rather than the agency engaging the worker, it would still need to be produced at a later stage than initial registration. Where a worker decides to use an intermediary, an umbrella for example, the umbrella needs to understand a lot about the worker's individual circumstances before the Key Facts document can be completed with any accuracy. They would need to know the worker's tax code, YTD income, whether the nature of the assignment would be suitable for tax relief on home-to-work T&S expenses, what pension contribution the worker wants to make (subject to the legal minimum of course) and a whole host of other factors that make up the exact deductions and therefore the calculation of pay. The intermediary needs time to collate and record all that information before the Key Facts document can be produced.

Unless there is clear evidence as to why this option – of the company who pays the worker sending the Key Facts document – would not work, this must be the preferred option, because it reduces the time it would take to compile the document, and give the most pertinent, accurate information to the worker, and means that the company responsible for payment is first approached by the worker with any questions about the document (which others in the supply chain are unlikely to be able to answer because they don't provide any form of advice relating to finances, tax etc and simply don't have that knowledge).

Finally, there is nothing in this document that states whether this new Key Facts document would be instead of, or as well as, the written statement envisaged in another consultation currently ongoing "Consultation on measures to increase transparency in the UK labour market".

We would appreciate clarity on whether the Key Facts document would be used **instead** of the written statement, or **as well as** the written statement, and if so who in the supply chain would produce / provide which one (and to be honest if both documents need to be provided to the worker then the whole process becomes rather nonsensical because the 2 requirements should have been considered in the same document).

To summarise, we believe these adjustments (at the very least) should be considered and the proposed changes to legislation amended as follows:

- 1) Consider **whether the Key Facts document is necessary at all** if most agencies (or their intermediaries) are already providing most of this information in some format (and what isn't already provided is because the information relates to costs or deductions by intermediaries and is simply too specific / burdensome for agencies to manage)? Should this requirement be extended only to the lower end of the temporary market (e.g agencies policed by the GLA?) How will you ensure that the agencies who don't provide adequate information now comply with the Key Facts requirement in the future? Otherwise you're simply penalising the companies who are already compliant.
- 2) Move the timescale for providing the Key Facts Document to after negotiations / discussions are concluded, but **before the start of an assignment**.
- 3) Move the requirement of providing the Key Facts document to the **company that pays the worker**, not the agency (unless the worker is agency PAYE in which case the agency provides the Key Facts).
- 4) Confirm who is responsible for the 'Key Facts' document, and who is responsible for the 'written statement' (from Transparency consultation). If the 2 documents are both to be provided by the agency, then the requirements of both need to be combined into one template. If it is 2 different parties in the recruitment process, then ensuring the combination of the 2 documents do not end up confusing or overwhelming the worker will be a key prerequisite. Otherwise the implementation of both documents is a waste of time because they do not achieve their aims.

1 (c): Thinking about work seekers and employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers		X					
Employers in the recruitment sector				X			

2: What information would be important to include in a "key facts" page?

The answer to this really depends on the timing of the document and who is responsible for sending it. If we assume that the document is sent out before the start of assignment, but not at the start of discussions or at registration, then all the information that is listed in the consultation document could be helpful and not particularly onerous on the company having to produce it because their systems will already hold that data, and they can pull it out into a template.

However, as mentioned at the top of Page 1, we have an issue with the term 'employer' used in the consultation (and in the list of areas that a Key Facts document would cover) and we would replace that term with 'engager' on any of our templates. Even agency PAYE workers are not employees, therefore the agency is never an 'employer'. To label ourselves as such brings implied employment risks to agencies so the term is widely avoided.

Limited company contractors or sole traders, who have to show clear evidence of self-employment (IR35 for PSCs, SDC for sole traders), would most certainly object to any paperwork stating the word 'employer'. As the vast majority of our temporary workers are self-employed limited company contractors, the backlash of using the word 'employer' in any documents would certainly overrule our desire to comply with the Conduct Regulations, therefore we would amend the terminology accordingly. It would be helpful if the template could consider the same.

If the timing and/or the company obliged to produce the Key Facts document stays as per the consultation, then there aren't any specifics that can be offered / provided at that stage, therefore it's largely irrelevant what the document should consist of since it would be completely generic, very long, and rather confusing (see figure 1). But we would produce and send it simply for the purposes of compliance.

Considering the current 'Employment Status' consultation that is currently open at the moment, if Parliament does legislate on changing and/or codifying legislation to better determine 'worker', 'dependent contractor', 'self-employed' etc. then having the distinction in the Key Facts document should be a consideration. Workers should know upfront how they are being defined, not only for the purposes of rights, but for tax as well.

2(a) What conditions should be in place to ensure the 'key facts' page is provided and understood by the work seeker before any contractual engagement?

Add the requirement to the Conduct Regulations to ensure agencies (and umbrellas) can be penalised if they do not comply.

Devise an easy way for workers to formally request the Key Facts page if it is not provided to them. Part of that formal request could include notifying EAS (who can follow up to ensure it is done). Similar to the formal request for AWR rights but with EAS backing.

Re workers' understanding of the detail: In order to be understood, the information has to be pertinent and accurate and relevant to the actual worker's circumstances, hence our arguments around the timing of the document, and who compiles it, is key.

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

Yes	X Within reason
No	
Don't know	

2 (a): If yes, how do you think this should be achieved?

If BEIS is going to include a requirement to ensure that the worker understands the detail of the Key Facts document, then only the company actually paying the worker can realistically compile and send it to the worker.

It's ludicrous to believe that a recruitment consultant (essentially a sales person whose function it is to match suitable candidates with open vacancies) can explain the intricacies of an umbrella, or CIS, or 'Inside IR35' payroll solution. They don't have that kind of knowledge, and to put that responsibility on a few subject matter experts (if that employment business has any such staff who can truly explain payroll processes) for all workers is unworkable.

BEIS assumes that all workers have simple supply chains / payroll models; that is simply not the case. Even people with in-depth tax experience find it difficult to explain what deductions are made for what taxes and why. Some temporary workers operate a limited company for the vast majority of their assignments, but for any assignment that they believe may put their self-employment (IR35) status at risk, will often use an umbrella for that one assignment. The umbrella company engaging the worker can explain how to report the PAYE payments made under the umbrella model when completing their Self-Assessment, so that they do not pay tax twice, but also to ensure that they are declaring the time worked under PAYE in order for it to count towards their income tax bandings (which of course impacts their

dividend tax liabilities). BEIS can't expect sales staff to understand these types of scenarios well enough to explain them to workers; therefore it makes sense that the subject matter experts, the companies actually making the deductions, be the one to explain it to them. And if that's the case, they should be the company sending the document out in the first place.

If the company paying the worker compiles the document, then any questions will go to them, the best placed person to answer them because it's their core business.

The worker could be asked to sign the Key Facts document, as evidence that it has been read and understood, and it allows a copy of the signed document to be retained by the engager (or the agency if responsibility for completion remains with the agency) for EAS audit purposes.

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.

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

About right	YES – if the document can be sent out at the end of negotiations but before the start of an assignment AND it is produced by the company actually paying the worker
Too high	
Too low	YES – if it is to be provided by the agency (but it is not the agency actually paying them)
Don't know	

3 (a): If too high or too low, please provide reasons for your answer below:

If it is the agency that has to provide the Key Facts document, even if it is not the agency actually paying the worker, then the estimate is too low.

While the actual 'typing out' of data into the template is probably only an hour, ensuring that the information to input into the template is up-to-date will take considerably more time.

For example, if the umbrella company changes its management fee, then the agency needs to be informed and the spreadsheet or other repository for the information (because most agencies operate a PSL of multiple umbrellas) needs to be updated. Similarly the list of benefits offered by each intermediary needs to be maintained and these can change relatively frequently.

If the Key Facts document is sent out at registration, but a worker decides to change his or her payroll mechanism before the start of the assignment, agencies will need another hour to complete the document again.

If the worker has questions that the agency can't answer, because it relates to deductions by an intermediary that they can't explain with their limited knowledge, then the worker will have to be referred to that intermediary, and the agency comes across as unhelpful, or unknowledgeable, when that's just not the case. It's simply that all people can't know all things.

If the agency has to be able to explain the detail included in the document to the workers, then there is the additional cost of either training the sales staff / recruitment consultants (which is very unlikely to be effective) or hiring new or upskilling existing back office staff to take on these responsibilities. This is considerably more cost than anticipated in the question above.

All of these issues are eliminated if the document can be sent out before the start of assignment as opposed to registration stage (except in a tiny minority of cases where changes might happen very last minute), and if the company sending the Key Facts document is the company actually making the payments to the worker.

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?

Yes (please provide details below)	X
No	
Don't know	

4 (c): If yes, please provide further details below:

As detailed above (section 3)

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?

Yes	X – as a supply chain partner, not as a worker
No	
Don't know	

(a) If so, for what reason? e.g. as a work seeker or employment business for payroll purposes. What has your experience been?

As an employment business. Please note we don't use umbrellas for 'payroll purposes' as your question suggests. Our workers are free to choose the payroll mechanism that best suits them – PAYE, umbrella, Limited company, self-employed etc.

We also use umbrellas for processing payments for contractors working Inside IR35, and for sole traders working within the CIS scheme.

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

There are many benefits to using an umbrella if you're an agency worker. Some examples (not an exhaustive list) are below:

You are not classed as 'self-employed' for the purposes of getting credit / mortgage etc. The worker is employed, albeit under an overarching / umbrella contract of employment. But they are paid by the same company for multiple assignments, which shows continuity of service / employment (also good for credit etc). If the worker chose agency PAYE for each different assignment, it looks like they are working for multiple employers in the same year, which impacts their credit rating.

Because the worker undertakes multiple assignments under one company, the worker develops a better relationship with the umbrella than a one-off engagement directly with an agency. With a large umbrella market, competition is fierce; therefore customer service is key to retaining employees, so that is a key focus for umbrellas (rather than agencies who are paid by the client, not the worker, so their focus is different).

Umbrella workers are automatically covered by the umbrella's insurances, bringing piece of mind to contractors and of course removing the requirement to purchase their own insurances. Any agency operating an umbrella PSL will check and keep copies of the umbrella's insurances, so everyone in the supply chain knows that any loss / damage / negligence etc is covered and agencies can negotiate contracts with their clients knowing that any liabilities they agree to are covered (either by their own or the umbrella's insurances). Some umbrellas hold additional insurances for certain sectors or types of work, such as O&G,

offshore etc. These specialist insurances are very expensive to purchase on an individual basis, but by using an umbrella, the worker can rest assured that these areas are covered.

Umbrellas have massive buying power (because their main function is simply to employ people). They often partner with other companies to offer significant discounts on other goods and services (please note this is not the same as additional goods and services that workers are required to purchase, these are purely voluntary).

Examples include gym membership, cinema tickets etc, but also include benefits such as life insurance or private medical insurance, which at the lower rates that the umbrella can offer because of their size, can make the difference between an entire family having cover and no-one having cover. If you are the main breadwinner of a family, an umbrella solution is generally the most suitable because of the additional benefits they bring.

Umbrella workers have all the rights of PAYE workers – in scope of the Conduct Regulations, AWR, entitled to holiday pay, sick pay, maternity pay, pension etc. An umbrella solution is often the 'first stop' for individuals considering a contracting career; its flexibility means many more individuals work on a temporary basis than would do so if it was not an option, giving end users access to more skills and helping the economy to recover and thrive.

There is significantly less administration involved in umbrella employment as opposed to self-employment (sole trader) or limited company contractors. The increased use of technology, which most umbrellas use to great effect and positive impact, means workers know at any given time at the touch of a button what they'll be paid and when, how long their current assignment is and whether it's been extended, and what, where and when their next assignment is (providing the worker has arranged it already).

Depending on your assignment and whether a worker is subject to SDC (supervision, direction and control), the worker can claim tax relief on certain home-to-work travel and subsistence expenses. This isn't an option for agency PAYE workers, so for workers who are not subject to SDC and who travel large distance for their assignments, this can make a significant difference to their take-home pay.

The main problem with umbrellas is that not all of them are compliant and/or financially stable. Some companies will dissolve overnight, leaving the worker unpaid (but the agency has paid the umbrella). Others will make unlawful deductions from wages or take very high management fees from the worker, without the worker really knowing what the umbrella is doing to justify that management fee. However this risk can be offset by engaging with only the most compliant and well-established umbrellas, such as those who are fully accredited members of the FCSA (Freelancer and Contractor Services Association).

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)

	Yes	No	Don't know
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?		X	
ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework ¹ 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?	X		

Please provide reasons for your answer below

Professional umbrella companies already undertake almost all of the responsibilities that are regulated by EAS so there is little or no work for them to do to be completely compliant. Those who do not currently comply with the responsibilities should do be required to do so, to level the playing field for the compliant umbrellas and to help the umbrella industry be perceived in a better light (and there are many very professional, compliant umbrellas in the UK).

The industry is largely self-regulated so it would be great to see it fall under the auspices of EAS to better outline and agree the responsibilities of agencies and/or umbrellas in the future.

If the umbrella industry does come under the remit of EAS and is subject to (some of) the Conduct Regulations, when the Conduct Regulations are amended to include the Key Facts document, BEIS would need to make sure that only one of the parties sends out the document to workers.

It is worth mentioning that EAS can better manage the enforcement of the Key Facts requirement, where the requirement is put onto the company responsible for paying the worker, rather than the agency (if the 2 are not the same), if it is responsible for both agencies and umbrellas.

7 (a): Thinking about work seekers and employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a:

¹ The Employment Agencies Act 1973 (the Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations).

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers		X					
Employers in the recruitment sector		X					

Please provide reasons for your answer below

We believe that the vast majority of professional umbrellas already give workers significant amounts of information about their assignments, and pay rates, deductions etc, hence why the positive impact would be small. If, as the Taylor Report suggests, a lack of information and insight into rates, fees, deductions is rife in the umbrella (and/or recruitment) industry), then adding this requirement would have a much more positive impact on workers, providing those companies do actually comply with this requirement.

For engagers / agencies, it makes a lot more sense that the umbrella completes the document and sends it to a worker, as they are best placed to answer any questions. Obviously the agency would send out the document for any agency PAYE workers.

7(b): 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:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers	X						
Employers in the recruitment sector		X					

Please provide reasons for your answer below

If non-compliance in the umbrella industry is as extensive as the Taylor Report suggests, then of course having the industry subject to EAS oversight will have a beneficial impact on workers. They have a place to complain to about unprofessional practices and/or deductions from wages etc. Just knowing that they are now government regulated will increase public confidence in umbrellas, so it can only be positive move.

For agencies who use umbrellas, all professional employment businesses should be conducting extensive due diligence on their supply chain prior to contractual relationships, so they should only be working with the most professional, compliant, stable umbrellas anyway. But any increase in compliance in the industry is to be welcomed, even if the impact isn't that extensive.

Section 3: Ensuring the Swedish Derogation is used appropriately

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

Yes	No	Don't know
	X	

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

We don't operate PBA or allow any of our supply chain partners to use PBA.

Our greatest concern with PBA is that it gives the potential for mis-use (as a way to bypass rights completely rather than offering a genuine alternative to AWR rights). But we are aware that many companies use it effectively (and compliantly).

10: In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?

Very effective	Fairly effective	Not very effective	Not at all effective	Don't know
				X We simply don't have enough knowledge of how it works in practice

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

No evidence

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

Yes	No	Don't know

Please provide reasons for your answer below

N/A

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?

Agree strongly	Agree slightly	Neither agree nor disagree	Disagree slightly	Disagree strongly	Don't know
	X				

Please provide reasons for your answer below

There is little evidence to suggest that AWR is not being complied with.

There have been markedly few AWR claims since its implementation. This may partly be due to the fact that workers have to bring tribunal claims to enforce their rights (and tribunals are costly and time-consuming), but it is unlikely to have been a massive deterrent. We believe there is little evidence to suggest non-compliance with the legislation, so not much of a need to enforce it. If the government has decided that it must move AWR enforcement to a government department, then EAS is the right one, but it doesn't seem to be 'broken' as it is now.

Any further comments

We would like confirmation of how this consultation, and specifically the Key Facts document, fits into the separate consultation on 'Increasing Transparency' that references the provision of a 'written statement'.

The government needs to ensure that it co-ordinates these types of changes so that the net effect increases knowledge and transparency to the worker, not provide so much information from such a myriad of sources about different areas that it increases confusion.

Additional Information provided:

Figure 1 (referred to above):

Key Facts Document

If the document must be sent at initial discussion stage, then **all these possible payroll options would be need to be included in that document** as per the below.

If you are engaged on a PAYE basis:

We outsource our PAYE function to a company called Giant.

Giant will be your employer and the company responsible for paying you.

All fees associated with the outsourced PAYE service will be borne by us.

There are no other fees, costs or charges that you need to pay.

We will pay Giant the assignment income that you agree with your recruitment consultant.

Giant will make deductions for income tax and employee's National Insurance before making payment to you. Giant will explain exactly what amounts these deductions are. We can't provide actual amounts for statutory deductions until the pay rate for your assignment has been agreed.

If you are engaged through an umbrella company on our preferred supplier list:

The umbrella company that you choose to work with will be your employer and the company responsible for paying you.

We will pay the umbrella company the assignment income that you agree with your recruitment consultant. Please note this is not the same as the amount

that you will be paid as the umbrella makes certain deductions before paying you, to cover the cost of employing you.

You will be required to pay the umbrella company a management fee of £20-£30 per week worked, depending on the umbrella company you choose to work with.

The umbrella company will deduct employer's National Insurance, holiday pay, pension contributions and the Apprenticeship Levy from your assignment income.

The remainder of the assignment income is your actual (gross) pay, and the umbrella will deduct employee's National Insurance and income tax before making payment to you.

The exact deduction amounts will depend on your income tax band and whether you are eligible for tax relief on certain expenses. The umbrella company will explain all these deductions to you. We cannot provide that information to you.

Additional benefits offered by the umbrella company include: insurance cover, childcare vouchers, free cinema tickets, reduced gym membership fees. The exact benefits offered vary with each umbrella company and will be explained to you by the umbrella company you choose to work through.

If you are engaged through your own limited company (working in a private sector assignment):

The limited company will be your employer and the company responsible for paying you.

There are no fees, costs or charges that you need to pay.

We will pay the limited company the assignment income that you agree with your recruitment consultant. We will not make any deductions from the assignment income.

It is the limited company's responsibility to decide what portion of the assignment income is personal income (and therefore subject to PAYE) and what is company income.

If you are engaged through your own limited company (working in a public sector assignment which is considered Inside IR35 where the public sector body has refused to pay the Employer's NI):

We outsource the payment of limited company contractors operating Inside IR35 to a company called Freedom Friday.

Your own limited company is your employer and the company responsible for paying you.

Freedom Friday is the company responsible for paying your limited company.

All fees associated with the outsourced service will be borne by us.

We will pay the assignment income that you agree with your recruitment consultant to Freedom Friday.

Freedom Friday will make deductions for Employee's National Insurance, Employer's National Insurance, income tax and the Apprenticeship Levy. The exact deductions made will depend on your individual circumstances (income tax band etc). We cannot provide that information to you.

Freedom Friday will pay the remainder of the assignment income to the limited company.

If you are engaged through your own limited company (working in a public sector assignment which is considered Inside IR35 where the public sector body has agreed to pay the Employer's NI):

We outsource the payment of limited company contractors operating Inside IR35 to a company called Freedom Friday.

Your own limited company is your employer and the company responsible for paying you.

Freedom Friday is the company responsible for paying your limited company.

All fees associated with the outsourced service will be borne by us.

We will pay the assignment income that you agree with your recruitment consultant to Freedom Friday.

Freedom Friday will make deductions for Employee's National Insurance, income tax and the Apprenticeship Levy. The exact deductions made will depend on your individual circumstances (income tax band etc). We cannot provide that information to you.

Freedom Friday will pay the remainder of the assignment income to the limited company.

If you are engaged on a self-employed basis operating under the CIS scheme:

We work with a company called ADVANCE Contracting to manage payments to CIS-registered workers.

Advance is not your employer, as you are registered as self-employed, but it is the company that is responsible for paying you.

We will pay Advance the assignment income that you agree with your recruitment consultant. Please note this is not the same as the amount that you will be paid as Advance will make deductions from this income under the CIS rules.

You will be required to pay Advance a management fee of £20 per week worked.

Advance will deduct the relevant amount from your assignment income as required by the CIS regulations before making payment to you. Advance will explain what these deductions amount to. We cannot give you that information.

The remainder of the assignment income is your actual pay, and no other deductions will be made. You will be required to make payments for income

tax and National Insurance when you submit your Self-Assessment to HMRC each year. Any overpayment of tax (as deducted by Advance during your assignment) will also need to be claimed back directly with HMRC. There are no other benefits offered by Advance for this service.

Key Facts Document if sent by the agency once assignment details are agreed but before the start of assignment:

Contractor Name:

Engagement Type: PAYE / Umbrella / Limited Company / Self-Employed (sole trader / CIS) – only one type will be selected for each assignment

The company responsible for employing you is: Giant / Name of Umbrella / Name of Limited Company / Freedom Friday/ None (for self-employed / CIS) – only one type will be selected for each assignment

The company responsible for paying you is: Giant / Name of Umbrella / Name of Limited Company / Freedom Friday/ Advance - – only one type will be selected for each assignment

Why this company is your employer: Because we outsource our PAYE function to a company called Giant/ Because you have chosen to work through an umbrella / Because you have chosen to work through your limited company / Because we outsource the payroll function for any public sector assignments designated as Inside IR35 to a company called Freedom Friday / Because we outsource the payment of any self-employed CIS-registered workers to a company called Advance – only one type will be selected for each assignment

Details of any goods or services that you are paying for: Refer to your umbrella

Pay Rate (this is the amount we will pay the company responsible for paying you):

Deductions that will be made from the Pay Rate by the company paying you: Refer to your umbrella

Additional Benefits offered by the company paying you: Refer to your umbrella

Key Facts Document if the company paying the worker has to provide the Key Facts document:

Contractor Name:

Engagement Type: PAYE / Umbrella / Limited Company / Self-Employed (sole trader / CIS) – only one type will be selected for each assignment

The company responsible for employing/engaging you is:

The company responsible for paying you is:

Why this company is responsible for paying you:

Details of any goods or services that you are paying for:

Pay Rate from the agency to the company paying you: This can be an exact amount

Deductions that will made from the Pay Rate by the company paying you:

(can include management fee, 'employer' costs, employee costs, IR35 deductions if applicable etc all in here, with exact amounts)

Additional Benefits offered by the company paying you: This can be exact as the company paying the worker knows all their benefits.

Figure 2: Example of our template assignment confirmation schedule, sent before assignment starts. The information in brackets relates to mailmerge fields in our database.

ASSIGNMENT CONFIRMATION SCHEDULE

Contract No.	«CONTRACT_NUMBER»	Purchase Order No.	«ORDER_NUMBER»
Date Issued	«DATE_ISSUED»	Representative	«CONSULTANT_NAME»
Supplier	«CANDIDATE_COMPANY_NAME» No. («COMPANY_REG_NO»)		
Supplier Representative	«CANDIDATE_NAME»		
IR35 status (only applicable for Public Authority Assignments)	«DEPARTMENT»		
Conduct Regulations status	«CANDIDATE_LOOKUP_CODE_2»		
Scope of Services / Project	«JOB_TITLE»		
Contract Start Date	«START_DATE»	Anticipated End Date	«END_DATE»
Notice Period	«NOTICE_PERIOD_1» weeks’ professional notice by <<Registered_Company_Name>> and «NOTICE_PERIOD_1» weeks’ professional notice by the Supplier.		
Fee rate (net of any applicable VAT)	€«PAY_RATE» per «CHARGE_UNIT»	Payment frequency	«PAYMENT_FREQUENCY» See Clause 4.4
Agreed hours per week	«HOURS_PER_WEEK» or as otherwise agreed		
Additional Hours	Strictly subject to Customer’s prior approval. «OVERTIME_TEXT_1»: €«OVERTIME_RATE_1» «OVERTIME_TEXT_2»: €«OVERTIME_RATE_2» «OVERTIME_TEXT_3»: €«OVERTIME_RATE_3» «OVERTIME_TEXT_4»: €«OVERTIME_RATE_4» «OVERTIME_TEXT_5»: €«OVERTIME_RATE_5» «OVERTIME_TEXT_6»: €«OVERTIME_RATE_6» «OVERTIME_TEXT_7»: €«OVERTIME_RATE_7»		
Equipment supplied by Supplier	--		
Insurance held by Supplier	As per Clause 16.3 and / or as per Insurance Schedule (if applicable)		
Special Conditions	As stated in any attached Schedules or Addendums below.		
Customer and location of services	«LOCATION_COMPANY_NAME» «LOCATION_CONTACT_ADDRESS1» «LOCATION_CONTACT_ADDRESS2» «LOCATION_CONTACT_ADDRESS3» «LOCATION_CONTACT_TOWN» «LOCATION_CONTACT_COUNTY» «LOCATION_CONTACT_POSTCODE» «LOCATION_CONTACT_COUNTRY»	Location Unless specifically stated otherwise, the Services are to be delivered at UK sites only. Any impending change of Location (including any change of Location to a site or sites outside the UK) must be notified to the Company prior to commencing the provision of Services.	
Client	«COMPANY_NAME»		