



Corporate Response

Good Work: The Taylor Review of Modern Working Practices

**Consultation on agency workers
recommendations**

Business, Energy and Industrial Strategy Committee Inquiry

Written evidence submitted by Peninsula

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Success Starts Here

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Introduction

This submission to the Department for Business, Energy and Industrial Strategy is made on behalf of Peninsula Business Services Limited. Our organisation is a UK consultancy firm providing advice to companies primarily on employment law and health and safety. We provide support to over 30,000 clients. This support includes providing guidance to employment business and third parties on the use of agency workers.

Executive Summary

We support the introduction of a key facts page to increase the transparency available to work seekers when making decisions about future work engagements. We believe, however, that it is important that any underlying requirements and conditions do not place an overly burdensome requirement on employment businesses. This is especially important to avoid discouraging those businesses who operate lawfully within this sector and, through their participation, lead to valuable work positions for agency workers.

We also believe wider state enforcement should be introduced that applies uniformly across all agency business models. This avoids the creation of two-tier enforcement depending on the type of business model adopted and removes the reliance on individual agency workers or work seekers to raise concerns of poor and unlawful treatment themselves. We also understand that sufficient resources will need to be made available to ensure enforcement is effective and adequate. Any extension of the enforcement powers should ensure that other methods of support and advice are available to allow workers, work seekers and employment businesses to understand their rights and lawful practices.

When considering these recommendations, it is important to not assume that the agency business model does not provide effective support, clarity or the provision of correct rights for all workers and work seekers simply because there are a few who use this business model for their own financial benefits. The assumption that all agency workers are exploited would be akin to punishing the many because of the errors of the few. The steps outlined within this recommendation, however, will penalise those who are operating unlawfully whilst ensuring no material detriment for those who apply the law and best practice correctly.

Consultation Questions

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

In our experience, we 'slightly agree' that a 'key facts' page would support work seekers in making decisions about work due to the increased certainty this page would give the work seeker on the main terms of the work engagement. In order to provide adequate support in the decision-making process, there will need to be a period of time between receiving the 'key facts' page and making the work decision that is sufficient to allow the page to be fully supportive.

We only 'slightly agree' that the page will support work seekers in making work decisions as our experience in advising clients during the recruitment process has shown that work decisions are often made dependent on the individual's personal circumstances, including family, financial and work aspirations, and what they deem to be important within work, for example, whether this is the rate of pay, the nature of the work carried out or the career prospects within the role. Whilst a 'key facts' page would help support the work seeker in making a decision about work, it may not provide information on all the important factors, or the most important factor, required for the decision-making process, especially as these are likely to differ significantly depending on the individual.

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

The prominent key facts within the 'key facts' page should be those facts which are typically used when work seekers make decisions about work. Although this requires a certain assumption to be made, the prominent key facts should be those relating to pay, including rates of pay, how they are paid and any deductions from pay, as well as the method of engagement and the benefits on offer to the work seeker during the engagement.

The issue of prominence suggests the 'key facts' page could contain a substantial number of facts of which a few should be highlighted. It will be important to ensure the 'key facts' page remains fit for purpose and is limited to those facts regarding the engagement which are deemed to be key.

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		<input checked="" type="checkbox"/>					
Employers in the recruitment sector			<input checked="" type="checkbox"/>				

Please provide reasons for your answer below

As explained in answer to question 1 above, we believe that the provisions of a 'key facts' page will have a small positive impact for individual work seekers. Whilst the information contained within the page will help the work seeker make an informed, more certain decision about their future work engagements, the page will only have a significant positive impact for all work seekers where this contains information relating to the key factor present in all work decisions. As the key factor present in many work decisions differs on an individual basis, often depending on the individual circumstances of each work seeker, the impact of providing a 'key facts' page will have a positive impact but may be limited to a small positive impact in many cases.

As the provision of a 'key facts' page creates an additional administrative burden, and may itself be introduced alongside relevant conditions and requirements, we believe that the provision of the page will have some negative impact on employers in the recruitment sector. There will, however, be a parallel positive impact as the it will help increase transparency within an, often, complex business model. This will, in turn, create a more positive perception of the sector, from those who

work within it and also from the public, which may result in agency working becoming more attractive and beneficial for those who seek work.

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

In our experience, it will be important to ensure the ‘key facts’ page is not merely a repetition of the information contained within the written terms and conditions of employment to avoid creating a repetitive administrative burden for employment businesses. As mentioned in 1(a), it will also be essential to ensure the information required to be included within the ‘key facts’ page is limited to those facts which are key to the engagement to ensure the page remains fit for purpose.

We agree that the list of information contained within the consultation outlines appropriate information to include in a ‘key facts’ page. We would also include the frequency and method of pay as this can be a key factor for work seekers when making decisions about work due to their personal and financial circumstances.

We would suggest a non-exhaustive list of information that is required to be included in the ‘key facts’ page is introduced. This will help ensure the document contains a minimum level of suitable key facts whilst also ensuring there is not an onerous burden on employment businesses to provide a definitive document containing repetitive or wide-ranging information about the engagement. It will then be for the employment business themselves to add to the non-exhaustive list where they deem this appropriate or through their own experience, for example, where a question regarding the engagement is repetitively asked by work seekers the employment business could choose to add this to the list of information they deem to be a ‘key fact’.

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?

The most appropriate condition to ensure the ‘key facts’ page is provided to the work seeker is a requirement to provide this document within a certain time frame before the commencement of the contractual engagement. This timeframe will need to be sufficiently early to ensure the work seeker has adequate time to read and understand the ‘key facts’. To ensure this condition is met, a penalty could be introduced to encourage employment businesses to comply with the condition, in a similar fashion to the compensation available for a failure to provide a statement of main terms and conditions of employment. This penalty should be reasonable and seek to encourage compliance, rather than penalise.

The purpose behind the requirement to provide a 'key facts' page will not be met if the document contains outdated or erroneous information, however well this can be understood by the work seeker. The information provided within the 'key facts' page should be accurate and up-to-date on the date the document is provided to the work seeker to allow them to understand the information and help make an informed choice regarding work. Additionally, It is likely there will need to be a requirement on the employment business to ensure the information contained within the 'key facts' page is accurate, as far as is reasonably possible on the date this is provided to the work seeker.

To ensure the 'key facts' page is fully understood by the work seeker, a condition that requires the document to be produced in plain English will be useful. This will ensure all work seekers regardless of age, education or experience can understand the key facts contained in the document and are not confused by the inclusion of technical or legalistic language. Consideration may, however, have to be given to the language used where the work seeker does not have English as their native, or first, language. The most appropriate channel for this may be to provide additional helplines or guidance for those workers, although full understanding of the terms may only be achieved with complete translation of the document to the work seeker's native language; a significant administrative burden for any employment business to meet.

We would also suggest a condition requiring the work seeker to sign and date the 'key facts' page will be useful to indicate both their receipt of the document and their understanding of the information contained within this. This will be a clear, unambiguous declaration from the work seeker and can be easily stored and produced by the employment business should they be required to later prove they have met the requirement to provide the document.

Whilst we would agree conditions should be put in place to ensure the provision and understanding of a 'key facts' page by the work seeker, we believe these conditions should not place additional red tape or onerous requirements on the employment business. It is vital these conditions are merely safeguards to ensure the 'key facts' page is provided to the work seeker in advance of the engagement and is produced in a manner which can be understood by the work seeker, rather than placing additional burdens on employment business for using this business model.

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

Yes, there can be a danger in assuming the work seeker understands the information provided to them within a 'key facts' document, especially where there is a language barrier or the work seeker

is of a young age. Additionally, the imbalance of power within the employment business–work seeker relationship has the potential to result in the work seeker merely stating they fully understand the information within the document to ensure they are placed in the best position to be assigned a contractual engagement.

It is a concern of ours, however, that a requirement to ensure a work seeker fully understands information being given to them is a significant burden for employment businesses which can prove difficult, or even impossible, to prove compliance with.

3(a). If yes, how do you think this should be achieved?

The most appropriate way for the employment business to adhere to this requirement, without placing restrictive obligations on the business, is likely to be a requirement to seek a declaration from the work seeker that they fully understand the information contained within the document. The work seeker can then sign and date the document to declare their understanding. Any declaration should be worded in a fashion which ensures the work seeker has clarity on what they are signifying by signing the declaration, and should provide the work seeker with the option to seek further guidance or raise enquiries with the employment business before signifying their acceptance.

Alongside the requirement placed on the employment business to ensure the work seeker understands the information provided to them, adequate support and guidance should be introduced for the work seeker to help aid their understanding, for example, through the introduction of an online service or helpline for work seekers. This will help reduce the burden placed on employment businesses whilst ensuring the work seeker has sufficient support available to them to personally take such steps as is reasonable to aid their own understanding.

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

We believe an hour is about right to estimate the time it would take to produce an information document for a work seeker, however for some employment businesses in particular circumstances, the time estimate of an hour could be too high or, alternatively, too low to reflect the amount of time it would take to produce this document.

4(a). If too high or too low, please provide reasons for your answer.

The amount of time it would take an employment agency to produce an information document will differ business to business, depending on the resources available, the efficiency gained with experience at producing these documents and the numbers of work seekers seeking engagements through the employment business. External factors will also weigh on the time estimate, for example, where key facts are requested from the end-user or hirer for inclusion within the document and they unreasonably delay providing these to the employment business.

One way to ensure the time required to produce the document is capped at a maximum, will be to introduce a standard template document. This document can be provided online to all employment businesses along with detailed guidance on how to complete this. The internal and external factors will continue to affect the time taken to produce the document, however, as the individual key facts will differ depending on the contractual engagement to be undertaken by the work seeker.

The consultation paper does not address whether there will be a requirement on employment businesses to update the information document where the 'key facts' are amended in the period between the document being provided to the work seeker in advance of the engagement and the engagement commencing. This will produce a further burden on the employment business and, in most cases, it is likely any amendments to the key facts will be outside of the control of the employment business.

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?

In our experience, we believe that there will be other business costs involved in the production of a 'key facts' document.

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

In addition to the time taken by personnel to produce the 'key facts' document, there will be other time costs to the business relating to processes other than production. This could cover, for example, time spent by personnel to amend information where the third party informs them that key facts have been updated or any time spent to ensure the accuracy of the information provided by the third party. In line with this, any requirement to receive a signed and dated copy of the 'key facts' document from the work seeker will inevitably result in a time cost relating to the reminding work seekers of their requirement to do this, chasing documents from work seekers who delay carrying this out and the time spent to ensure signed and dated documents are stored correctly by

the employment business. Where the work seeker has a query regarding the information contained within the 'key facts' document, this will require the employment business to act as an intermediary between the work seeker and the third party as, due to there being no relationship between the work seeker and the third party, they will be required to ask the third party for clarity before being able to relay this information back to the work seeker. A number of questions from the same work seeker, or different questions raised by a number of individual work seekers, could result in a significant amount of time being spent as a 'go-between' to aid clarification of the information.

Depending on the rules around processing and providing the 'key facts' document, there is likely to be an administrative cost required by the production of a paper document to each work seeker. This could be avoided by ensuring 'key facts' documents can be provided electronically, for example through email attachments, however this will require the work seeker to have sufficient access to the Internet and corresponding technology. Whilst this is likely in the modern age, assuming each work seeker can access an electronic document could leave those who do not at a disadvantage.

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

As an employer, we do not use umbrella or intermediary companies within our supply chain. We do, however, advise clients who have used or currently use umbrella or intermediary companies within their business model.

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

This is not our area of expertise and so we do not feel qualified to comment.

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.

Our experience of advising clients who use or have used an umbrella company or intermediary has led to an understanding of the potential problems for agency workers. There can be a lack of understanding and certainty as to the existence of contractual relationships and the party from whom they can seek clarity. In some situations, there can be conflicting information given to the agency worker which exacerbates this issue and results in them feeling unsupported. This can lead to additional problems when the agency worker is attempting to raise questions regarding their rights, or seek formal enforcement of these. On the other hand, where the umbrella company or

intermediary is used as an ongoing employment or payment body, this business model creates certainty of employment and payment for the agency worker; matters which are key to many workers at creating greater support and clarity in their working life.

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?		<input checked="" type="checkbox"/>	
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?	<input checked="" type="checkbox"/>		

Please provide reasons for your answer below

Dependent on the resources available to the Employment Agency Standards Inspectorate (EASI) and the enforcement powers to be granted, we believe that there may be cause to argue that their remit should be limited to the regulation of information provided to the individual. This is because it will ensure greater focus and energy can be given to this issue where resources are few, ultimately leading to higher enforcement and greater compliance. Where sufficient resources are available, however, we would suggest that the remit of the EASI with regards to the use of umbrella companies and intermediaries should be aligned which the regulation that is already carried on. This avoids the creation of 'two-tier' regulation where certain business models are subject to lesser

regulation than others; a situation which can lead to work seekers being required to work under the business model with lesser enforcement for the benefit of the other party. Uniform enforcement also ensures clarity of how regulation will be carried out across the agency sector, for both individuals and employers.

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
Individual work seekers		<input checked="" type="checkbox"/>					
Employers in the recruitment sector			<input checked="" type="checkbox"/>				

Please provide reasons for your answer below

The explanations provided above to question 1(c) are also applicable to the impact of introducing a requirement for umbrella companies to provide work seekers with a 'key facts' page.

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	Small negative impact	Significantly negative impact	No impact	Don't know

			some positive impact				
Individual work seekers	<input checked="" type="checkbox"/>						
Employers in the recruitment sector			<input checked="" type="checkbox"/>				

Please provide reasons for your answer below

Extending the remit of the Employment Agency Standards Inspectorate (EASI) to regulate umbrella companies will have a significantly positive impact for individual work seekers. We believe this extension will reassure work seekers by creating a positive perception that they are provided with equal support from state enforcement bodies regardless of the type of business model they work under. It will provide them with greater security and support when making work decisions. State enforcement will also remove the obligation on the individual work seeker to tackle unfair practices themselves. This, in itself, is a positive for work seekers and it will also have a resulting impact on business practices as state enforcement will lead to an increase in compliance from these business; helping to improve work conditions within this model.

Depending on the methods of enforcement carried out by the EASI, we do believe that this extension can have some negative impact on employers in the recruitment sector as it may discourage the use of this business model, in turn creating fewer job opportunities for work seekers. There will, however, be some positive impact for employers in this sector as wider as extended enforcement will only negatively impact those employers who operate unlawfully, whilst having no impact on those who do not. Greater enforcement against those who apply the law incorrectly will have a positive impact on the sector as a whole because it: helps to remove those with bad practice; will improve public perception and the reputation of this business model; and will lead to more work seekers considering this model for their future work.

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

As an employer, we do not use pay between assignments (PBA) contracts within our business. We do, however, advise clients who have used or currently use PBA contracts within their business model.

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

From our experience of advising clients who use PBA contracts, it is important not to assume that all agency workers who are working on a PBA contract basis are either forced into this situation or are being exploited. There are those who choose to work on this contract basis as their preferred method of working or because they are provided with income between assignments and see this as a more stable way of earning money. This is an obvious benefit to those workers who are employed by the employment business on a PBA contract, as well as affording them the opportunity of exercising employment rights and benefits that are in excess of those to which workers are entitled to receive.

Problems can develop from those working on a PBA contract basis where they do not fully understand the differences that arise from working on a PBA contract and those who don't. Talking to, and making comparisons with, colleagues can often lead to management issues and complaints and the agency worker model is likely to be no different. Greater pay issues are likely to be more prevalent where colleagues are working on a different contract basis and are paid a higher rate but do not understand the reason why.

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?

As mentioned above, it is important to not assume that these contracts do not provide effective support for workers and work seekers simply because there are a few employment businesses who use these contracts solely for their own financial benefits. The assumption that all agency workers on PBA contracts are exploited would be akin to punishing the many because of the errors of a few.

These contracts provide effective support for workers and work seekers during assignments in a number of manners. Whilst agency work provides agency workers with the flexibility to work when

they can, or when they need to, PBA contracts are effective at increasing financial security of agency workers and work seekers by providing continuity of pay, regardless of whether the worker is undertaking an engagement or is between assignments.

Additionally, research carried out by the GMB union has previously revealed that insecure work has an adverse effect on insecure workers' health, with 61% suffering stress or anxiety as a result of their insecure employment. PBA contracts are effective at supporting workers and work seekers as they provide employment security. Security of employment and consistency of pay is often a requirement for financial matters, such as loan applications or direct debit contracts, whilst also providing an individual with certainty and clarity over the security of their continued employment and future earnings.

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 breaks, annual leave or job vacancies?

From our experience of advising clients who use PBA contracts within their business, a further issue relating to PBA contracts can be the understanding of how these contracts work in practice and an awareness of the rights that are still afforded to agency workers working under these contracts. We are unable to provide further comment on this area.

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

The above issues do justify wider state enforcement as enforcement will only punish those who are in breach of existing legislation, rather than those employment businesses who use PBA contracts lawfully and successfully as part of their business model. Reviews and inspections to ensure compliance will encourage the correct application of current rules, whilst providing no penalty to those who properly apply these.

In our view, however, wider state enforcement should only be introduced alongside the introduction of more advice, guidance and supporting materials from the enforcement body for those employment businesses who use PBA contracts. Employment businesses should have adequate resources available to them to understand current rules and legislation to ensure they are afforded the opportunity to comply, in the same manner as extensive guidance produced by other state enforcement bodies such as HM Revenue and Customs.

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?

Generally, we agree that enforcement of the Agency Worker Regulations 2010 (“AWR”) should come within the remit of the Employment Agency Standards Inspectorate (“EASI”) as this will provide a course of action against those businesses who breach the AWR, whilst ensuring those who do apply the Regulations correctly are unaffected.

The consultation, however, is silent on the method of enforcement and more information will be needed on this. Care will need to be taken to ensure enforcement methods carried out by the EASI are not discouraging against those businesses who choose to use the agency business model for economic reasons and apply rights to agency workers lawfully. For example, the current naming scheme used by the Department for Business, Energy and Industrial Strategy for those who receive a minimum wage underpayment notice will, if applied by the EASI to breaches of the AWR, encourage compliance but may have a higher reputational damage as employment businesses usually operate within a more competitive market than ‘traditional’ employers. The overlap of enforcement by the EASI and action taken by the individual worker through the Employment Tribunal systems, an arguably easier method of enforcement now tribunal fees no longer apply, will also need to be carefully considered to ensure businesses are not at risk of double punitive action.

Conclusion

We believe that improving transparency and introducing uniform state enforcement will allow for greater protection for workers and work seekers, alongside encouraging greater compliance with current legislation across the agency sector. It is, however, important not to make assumptions about the agency sector as a whole when considering the methods available to improve working conditions for agency workers and work seekers.

We support the introduction of a ‘key facts’ page for work seekers to improve transparency when making decisions regarding future work engagements. We do believe that care needs to be taken to ensure onerous administrative burdens are not placed on employment businesses as this may discourage the use of the agency model.

We also support the extension of state enforcement to different business models within the agency sector as this will have a positive impact all businesses through discouraging incorrect and unlawful

operations. We do encourage, however, that appropriate guidance and support is introduced in line with greater enforcement to ensure individuals can increase their own awareness regarding the laws in this, often, complex area.

We are grateful for the opportunity to take part in this consultation and would be happy to be involved in further discussions on this matter if we could be of any further assistance.