

Enforcement of Employment Rights Consultation: Citizens Advice response

The logo for Citizens Advice, featuring a black speech bubble shape with the words "citizens" and "advice" in white lowercase text.

**citizens
advice**

About us

Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. We are the membership body for local Citizens Advice services in England and Wales. There are around 300 local Citizens Advice services in England and Wales giving advice from 2,700 locations including high street offices, libraries, courts, prisons, GP's surgeries and hospitals.

We helped 2.7 million people face to face, over the phone, by email and webchat in 2016-17. There were also 43 million visits to our online advice pages. The real-time data we receive from our clients helps us identify emerging issues, understand what is causing them and make recommendations on how to fix the problems.

Over the past year we have helped more than 160,000 people with issues relating to employment. Millions more have accessed our employment advice online. We therefore have a detailed understanding of how the labour market is changing and the implications this has for the lives of workers.

Recommendation 1

Her Majesty's Revenue and Customs (HMRC) should take responsibility for enforcing the basic set of core pay rights that apply to all workers – National Minimum Wage, sick pay and holiday pay for the lowest paid workers.

The government accepts the case for the state enforcing a basic set of core rights for the most vulnerable workers, and intends to move in this direction. The government will first evaluate the extent of the problem faced by low paid workers in accessing these rights and, following decisions relating to statutory sick pay, examine the best way to ensure the most vulnerable receive the level of protection they deserve, bearing in mind feasibility and cost-effectiveness for the taxpayer.

Citizens advice believe workers would benefit if government extended the scope of public enforcement to cover all similar types of employment claims, as we see significant detriment in areas such as holiday pay and statutory sick pay.

Currently, not all areas of employment enforcement are covered by public enforcement and similar areas of key worker rights are falling outside its scope. For example, where claims are usually straightforward and low value, such as holiday pay, they should be brought within an enforcement scheme similar to that of the HMRC NMW Compliance Team.

This will help ensure that vulnerable workers are more able to enforce their most basic rights.

1) Do you think workers typically receive pay during periods of annual leave or when they are off sick? Please give reasons.

Statutory Sick Pay (SSP)

Issues around leave, sick pay and sick leave make up more than half of the problems we see with pay and entitlements. In the last year, we've dealt with over 12,000 issues specifically related to SSP. This has increased alongside the changing labour market, with increasing numbers of people employed in part-time jobs, or becoming self-employed.

Between 20 and 30,000 people visit the Citizens Advice website every month to find more information on whether they are entitled to sick pay. Many face issues from employers refusing to pay sick pay or even being dismissed for claiming sick pay. This is just one of the employment areas where people can face sharp practice and can find it difficult to know how to determine and enforce their rights.

One of the most common issues with sick pay that we see at Citizens Advice are employers avoiding payment of sick pay. In some cases, this is due to employers misunderstanding the rules. Our evidence suggests that some employers do not understand which type of worker, or what amount of earnings or qualifying days of employment requires payment of SSP, resulting in employers refusing to pay SSP. While this misunderstanding is not in line with the law on SSP, in practice it can be very difficult for workers to resolve.

Case study: Karen

Karen has a zero-hours contract with a care provider and is not able to work for several weeks due to the medical treatment she has just undergone. She has given her employer a current sick note.

Karen usually works 20-30 hours a week. Her recent average earnings have been £1,200 a month (around £277 per week). About a third of her hours are usually 'sleep-ins', (overnight stays with the clients she is caring for), but these hours 'are not counted', according to her employer.

This means Karen hasn't been paid at all this month as her employer is wrongly of the opinion that her zero-hours contract exempts her from eligibility for SSP. As a result, she does not have enough money to live on or meet her mortgage payments. At Citizens Advice she was given food bank vouchers to help her feed her family whilst she gets help from an employment lawyer.

In other cases, we see some employers unlawfully using other channels to avoid offering SSP to staff who are eligible. This is a particular risk for people whose hours fluctuate - either because they have a zero-hours contract, variable shifts or have few set hours and rely on paid overtime. In some cases these staff are simply 'taken off the rota' when they are sick, rather than being paid the SSP they are entitled to.

Another challenge for those with fluctuating hours is in proving that they meet the requirements around earnings. Although the legal requirement is for employers to calculate entitlement based on the hours worked over the 8 weeks leading up to the period of sickness (rather than the minimum set out in a contract), in practice we see some employers ignoring this.

Given our analysis found there were 4.5 million people across England and Wales on these kinds of insecure employment contracts,¹ these risks jeopardise sick pay entitlements for a significant section of the workforce.

Most employers are keen to support their staff during periods of sickness and most workers receive at least SSP. However, if we are to tackle the detriment caused by the minority not following these rules - and particularly if the Government is to make progress towards closing the disability employment gap - gaps and avoidance within the existing sick pay system need to be addressed.

Sick pay has long been a fundamental component of the UK's employment protections. Given we accept some form of financial support should be available to everyone who is unable to work due to sickness, we now need to ensure the systems we have are set up to offer this. One obvious gap is for people whose combined earnings come to more than the £112 weekly threshold for accessing SSP, but who work multiple jobs. **A system should be designed to ensure that everyone meeting the earnings threshold can receive SSP.** This should be set up to minimise the administrative burden on individuals and employers; for example, it could entail HMRC paying directly, then claiming back the money from employers.

Holiday Pay

A stark example of the complexity faced by people being unfairly treated at work is the difference between the way complaints about national minimum and living wage laws and statutory sick pay are resolved compared to complaints about holiday pay. While HMRC currently enforces the former, workers have to go to a Tribunal to resolve disputes about holiday pay.

¹ Citizens Advice, [Press Release](#), June 2016.

Holiday pay non-compliance cases are not dissimilar in their relative low value and simplicity to issues that are currently under the enforcement remit of HMRC.

Problems with holiday pay can be exacerbated as some types of job make it harder to know what your employment rights are and therefore to take action to access or enforce your rights. For example, paid holiday entitlements vary from job to job, but most workers are entitled to at least statutory holiday leave and pay. In some types of work, significant proportions of people believe they have no holiday entitlement at all. Recent analysis of the labour force survey showed that half of people on zero hours contracts say they have no holiday entitlement, as do around two fifths of those on temporary contracts².

Case study: Allie

Allie is not getting the paid holiday she is entitled to on her zero hours contract.

Allie regularly works in a UK care home during the summer. She recently enquired about her paid holiday entitlement, and her employer informed her that, because she is on a zero hours contract, she doesn't have any holiday rights.

Allie visited Citizens Advice, who informed her that all employees are entitled to holiday including those on a zero-hours contract, and that her employer was not acting within the law.

For people having problems with their pay, there is very little difference between a claim regarding holiday pay to one about sick pay. Furthermore, when HMRC establish that a worker has been underpaid National Minimum Wage, there is often a consequential underpayment of holiday pay because this is based on what a worker normally earns. A worker can find that they are too late - because of time limits - to make a claim for the underpaid holiday pay in tribunal if they wait for the HMRC's ruling on the National Minimum Wage point, and moving this to public enforcement could relieve this issue.

The difference in approach has a direct impact on people. Recent research has revealed that UK employers' non-compliance with holiday pay costs UK workers

² Labour Force Survey, Q2 2016 , analysis contained in [Just about Managing](#), Nov 16

more than non-compliance with the national minimum wage. The interim Unpaid Britain report revealed that workers are denied £1.2 billion of wages and £1.5 billion of holiday pay each year.

Employer non-compliance with holiday pay - like the issues of national minimum wage or statutory sick pay - is commonly an issue which isn't restricted to an individual, but experienced across an employer's workforce. Instead of restricting redress to the private enforcement system, such an issue could be better dealt with by a combination of private and public enforcement. Public enforcement would mean problems could be addressed on a wider level, enforcing multiple employees' rights instead of just the individual. It would also ensure vulnerable workers could access this right.

We believe that the scope of public enforcement should be extended to cover all similar types of employment claims. Currently, not all areas of employment enforcement are covered and similar areas of key worker rights are falling outside the scope of public enforcement. For example, where claims are usually straightforward and low value, such as holiday pay, they should be brought within an enforcement scheme similar to that of the HMRC NMW Compliance Team.

The scope could also be expanded to cover other breaches of the Working Time Regulations such as daily and weekly rest breaks and the 48 hour maximum working week. Such issues should also be included within the remit of HMRC at a national government enforcement level.

We ultimately believe that a single organisation dedicated to the public enforcement of workplace rights should be created - the Fair Work Authority. The Fair Work Authority could provide a single entry gateway to all public enforcement, passporting workers to the services they need from direct labour market enforcement. The Fair Work Authority would compliment enforcement of individual employment rights through the employment tribunal, and would consolidate and simplify public enforcement of employment law. We have explored this option in depth and would be happy to discuss options for how this could work effectively.

3) What barriers do you think are faced by individuals seeking to ensure they receive these payments?

The redress landscape is complicated and lacks clarity. This has been a barrier to people seeking redress. In interviews with people who've had problems at work, interviewees said they would have benefitted from being able to "map out" the places they could turn to. We conducted a survey to find out more about people's experiences when they had experienced unfair treatment at work. Almost half (45%) of people we surveyed who experienced some form of unfair treatment in their workplace didn't try to enforce their rights. This indicated that - although public enforcement has a crucial role in making sure people's rights are enforced - it doesn't work as well as it should. There are two main barriers to better public enforcement:

Firstly, there are structural barriers that prevent people accessing public enforcement. Despite the fact that enforcement needs have remained consistently high, the activities of four of the main enforcement agencies have declined over the last 6-8 years. That decline is part of a wider context of inconsistency with varying operational capacity and reactive and proactive powers and responsibilities. These can overlap and be confusing.

The landscape is particularly complicated for workers to navigate as the agencies' remits can overlap. For example, an agency worker who has had wages unlawfully deducted might be confused about which of the 3 agencies that deal with pay they could potentially go to. This can be particularly confusing for workers considering the fact that many people experience more than one workplace problem at the same time. Of clients who came to Citizens Advice for advice on their pay and entitlements last year, 1 in 6 (16%) of those also sought advice on dispute resolution, 10% sought advice on the terms and conditions of their employment, and 5% sought advice on dismissal. Other issues experienced alongside pay and entitlements included advice on parental and carers rights, discrimination and redundancy. Trying to choose the 'correct' enforcement body whilst dealing with multiple workplace issues can feel bewildering and off putting. Indeed, not knowing what organisations they could take their problems to meant that some of our interviewees gave up trying to get redress and then regretted their decision at a later stage. One interviewee stated "I do regret not trying to do anything else...I [had] thought 'well, what can I do about it?'"

Secondly, people are put off enforcing their rights through public enforcement channels. Our survey revealed that people find enforcement complex - almost a third (32%) of people didn't take action because they believed that it would be too difficult.

Another barrier to individuals enforcing their rights and entitlements is a lack of awareness. Our survey revealed that few workers are aware of the range of organisations they can turn to in order to solve their disputes. More than a quarter (29%) had not heard of any enforcement agency. Almost two thirds (64%) of our survey respondents had heard of ACAS, but when looking at those in insecure, or 'gig' work, the CIPD found that less than 1 in 10 (9%) said they would go to ACAS if they wanted to complain or seek compensation. In comparison a quarter said they would be likely to go to Citizens Advice.

Of the respondents that didn't approach any people or organisations for help, after being mistreated at work, 31% said they didn't take action because they didn't think anyone would be able to help. In addition to a lack of awareness of the services available, it is unclear to people how these services can help them.

In-depth interviews with some of our survey respondents confirmed that there is a lack of awareness and understanding among workers of how to go about resolving their workplace disputes. Some of our interviewees said the absence of a clear first port of call for seeking redress meant they "didn't know where to start the conversation". This further reinforces the need for greater awareness of advice and information provision and enforcement bodies.

Again, we believe the creation of the Fair Work Authority would significantly improve this issue. In creating a single organisation dedicated to the public enforcement of workplace rights, user journeys are simplified and streamlined in the creation of a single entry gateway to all public enforcement.

5) What other measures, if any, could government take to encourage workers to raise concerns over these rights with their employer or the state?

Workers would benefit from better awareness of the support services available to them, in addition to better awareness of the enforcement bodies and their capabilities. In absence of the Fair Work Authority, workers would also benefit from clearer signposting between the different enforcement agencies, which would result in a much clearer and more accessible redress landscape.

Overall, we therefore suggest the following recommendations:

- 1. Enhance referral pathways between enforcement agencies.** When receiving a complaint, agencies should consider whether other rights have also potentially been breached. If further breaches are identified, as a matter of course, they should refer the complaint to other enforcement agencies accordingly as standard practice.
- 2. Consider clear pathways or potential referral routes between Employment Tribunals and enforcement agencies.** This could potentially allow a way of ensuring there is a wider look at whether issues raised at Tribunal affected a company's wider workforce in appropriate cases.
- 3. Extend the scope of public enforcement to cover all similar types of employment claims.** Currently, not all areas of employment enforcement are covered and similar areas of key worker rights are falling outside the scope of public enforcement. For example, where claims are usually straightforward and low value, such as holiday pay, they should be brought within an enforcement scheme similar to that of the HMRC NMW Compliance Team.
- 4. Ultimately, a single organisation dedicated to the public enforcement of workplace rights should be created - the Fair Work Authority.** The Fair Work Authority could provide a single entry gateway to all public enforcement, passporting workers to the services they need from direct labour market enforcement. The Fair Work Authority would compliment enforcement of individual employment rights through the employment tribunal, and would consolidate and simplify public enforcement of employment law.

Recommendation 2

Government should make the enforcement process simpler for employees and workers by taking enforcement action against employers/engagers who do not pay employment tribunal awards, without the employee/worker having to fill in extra forms or pay an extra fee and having to initiate additional court proceedings.

Citizens Advice believe that any changes to current systems should be non-restrictive to its users, and keeps them at the focus of service design.

7) The HMCTS enforcement reform project will improve user accessibility and support by introducing a digital point of entry for users interested in starting enforcement proceedings. How best do you think HMCTS can do this and is there anything further we can do to improve users' accessibility and provide support to users?

Our primary concern would be in ensuring that the digital point of entry is not restrictive, and that non-digital points of entry remain available for its users. More than 5 million people in the UK have never used the internet, and many more people need ongoing support to engage with digital platforms. It is important that these groups are supported in accessing enforcement, in addition to those who can benefit from the digital point of entry.

In addition to this, we believe better provision of online information that explains the county court and high court enforcement processes would be beneficial to users.

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further information**

for

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Citizens Advice provides free,
confidential and independent advice
to help people overcome their problems.

We advocate for our clients and consumers
on the issues that matter to them.

We value diversity, champion equality
and challenge discrimination.

We're here for everyone.



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