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By email to: increasingtransparency.consultation@beis.gov.uk
Department for Business, Energy and Industrial Strategy

To whom it may concern,

Good Work: The Taylor Review of Modern Working Practices
Consultation on measures to increase transparency in the UK labour market

I write on behalf of the Society of London Theatre ("SOLT") and UK Theatre Association ("UK Theatre") in response to the abovementioned consultation.

SOLT and UK Theatre are the trade associations and members' organisations representing the interests of those engaged in the production and presentation of medium to large-scale dramatic and lyric theatre in the UK. Both memberships are drawn from subsidised and commercial theatre.

The combined box office income of SOLT and UK Theatre's memberships was more than £1 billion across London and the rest of the UK, with 34 million tickets sold, in 2016.

SOLT represents approximately 220 London-based producers, theatre owners and managers, including all the major subsidised theatrical organisations in London. UK Theatre represents approximately 230 theatres, concert halls, dance companies, producers and arts centres throughout the UK. UK Theatre also operates as a professional organisation, supporting over 1,300 individuals working professionally in theatre and the performing arts in the UK.

We have responded to the questions which are relevant to our sector.

Written Statements

Q1 Have you provided a written statement of employment in the last 12 months to your permanent employees and/or your non-permanent staff? If yes, how many have you provided in the last 12 months and if no, please explain your reasons.

The answers to this question will vary amongst our members and we do not have information on how many written statements have been provided by them in the last 12 months.

Q2 In general, when do individuals starting paid work receive a) a written statement and b) an employment contract or other employment particulars?

Society of London Theatre is a company limited by guarantee registered in England and Wales, whose registered office is at the above address.

Company No 527227
VAT Registration No 242 2802 92

"UK Theatre" is the operating name of UK Theatre Association, which was founded by Sir Henry Irving in 1894 and is a company limited by guarantee registered in England and Wales, whose registered office is at the above address.

Company No 323204
VAT Registration No 242 2801 94

Our members provide an employment contract rather than a separate written statement in addition to an employment contract. When the employment contract is provided varies amongst our members but, in general, it is provided before paid works starts.

Q3 How long, on average, would it take a member of staff to produce a written statement for a new starter?

The period of time taken varies depending on factors including:
- whether it is a standard arrangement;
- whether a standard contract is applicable;
- whether there are any complex contractual terms;
- the role;
- whether it is during a busy period; and
- whether personnel who need to draft or approve the contract are on leave.

Our members said that it could take any time between approximately one hour and three weeks.

Q4 How often do you seek legal advice when producing a written statement?

Our members rarely seek legal advice when producing a written statement. They may do so if it involves complex terms or arrangements. For example, if it is for a particularly senior role or a high-profile person or involves certain IP rights, or perhaps if it is in relation to a Broadway deal.

Q5 Are there other business costs associated with producing a written statement, in addition to personnel and legal costs that we should be aware of?

In some cases, the cost of using DocuSign software to send contracts online and also the costs involved with performing a Disclosure and Barring Service check.

Q6-8 Not applicable.

Q9 To what extent do you agree that the right to a written statement should be extended to cover permanent employees with less than one month's service and non-permanent staff?

We understand why there is a desire to provide transparent information about employment terms to all. However, where employment is very short-term, eg less than a month or very ad hoc, eg an individual may work once or twice and not work for the business again, we believe that it could be disproportionate to provide the written statement in some cases, particularly if the content to be included within it is expanded.

Q10 The following items are currently prescribed contents of a principal written statement. Do you think they are helpful in setting out employment particulars?

- **The business's name**
- **The employee's name, job title or a description of work and start date**
- **If a previous job counts towards a period of continuous employment, the date that period started**
- **How much, and how often, an employee will get paid**
- **Hours of work (and whether employees will have to work Sundays, nights or overtime)**

- **Holiday entitlement (and if that includes public holidays)**
- **Where an employee will be working and whether they might have to relocate**
- **If an employee works in different places, where these will be and what the employer's address is.**

Yes, we do. However, for hours of work, it is likely to be difficult to provide specific days and times of work in advance or on day one in some cases, eg casual work, due to the very nature of the engagement. This level of detail in relation to hours of work should not, therefore, be required where not reasonably practicable.

Q11 Do you agree that the following additional items should be included on a principal written statement?

a) How long a temporary job is expected to last, or the end date of a fixed-term contract?

Yes. However, as fixed-term contracts can end in circumstances, other than solely on a specific date, it should be explicit that it is also acceptable to set out the end of the contract in the written statement by reference to the completion of a specific task or the occurrence or non-occurrence of a specific event, eg the end of a project.

b) How much notice the employer and the worker are required to give to terminate the agreement?

We agree that the general notice period required to terminate should be included on a principal written statement but there may be various rights of termination which only apply in particular circumstances (which may or may not arise). Where this is the case, we think it is reasonable for the employer to include that information in a separate document, eg a collective agreement (collective agreements are used for a number of roles in the theatre industry). The employer would then refer to the location of the information on notice periods in the principal statement, eg by reference to the collective agreement. It is then clear to the individual where to find the information but the principal statement would remain in a digestible format and include information which is relevant from day one, rather than information which may not ever become relevant.

c) Sick leave and pay entitlement?

Provisions in relation to sick leave and pay can be extremely lengthy and detailed so employers need to have the flexibility to provide this information in a separate document to avoid the principal statement becoming unmanageable. It is beneficial for both employees and employers that key terms are read and understood at the outset but if a statement or contract is too lengthy and contains information that only becomes relevant if an event occurs, employees are less likely to read it.

d) The duration and conditions of any probationary period?

Yes.

e) Training requirements and entitlement?

We think that it should be possible to provide this type of information in a separate document as it is not, in our view, one of the key contract terms that needs to be provided in principal statement.

f) Remuneration beyond pay, eg vouchers, lunch, uniform allowance?

We agree that the basic remuneration should be set out in the principal statement but there can be a lot of information on other forms of remuneration which we believe the employer should be able to provide in a separate document. Under the collective agreements which operate in the theatre industry there are numerous potential additional payments depending on the role and whether someone performs additional work, eg additional performance payments. It works far better to have this detailed information (some of which will not actually be relevant if the particular additional work is not required) in the collective agreements which everyone has access to, than to include it in the principal written statement and make it unmanageable.

g) Other types of paid leave, eg maternity, paternity and bereavement leave?

This information should not be in the principal written statement. In many cases these are not provided as contractual rights and, therefore, the details in relation to them do not need to go in the contract containing the principal terms. Also, employers often provide a high level of detail in relation to these types of leave to aid understanding by employees, eg rules on eligibility for leave, notification procedures, eligibility for pay, amount of pay, any provisions regarding the return to work, rights during and after maternity leave. It is not appropriate to include this type of information and level of detail in the principal statement. It could give rise to uncertainty to only include part of the information, eg the pay, which is not desirable as it is important for the individual to understand the information which is relevant in terms of both the leave and pay. Finally, this is information which may only affect a minority of people and is not in our view information which is required at the outset of employment, so to use a significant part of the statement to include this is disproportionate.

Q12 To what extent do you agree that the principal written statement should be provided on (or before) the individual's start date?

We understand the intention behind providing this to individuals on or before their start date. However, we strongly believe that there needs to be some flexibility in the provision governing this as it is not always possible to do so, eg when emergency cover is hired, when there is a short period of time between agreeing terms and the work starting, or when any of the factors set out in our response to Q.3 apply. We, therefore, believe that, if the period is to change, the principal written statement should be provided within one month of the start date and that a longer period should be permitted where this is not reasonably practicable. If this is not accepted and the principal written statement is required to be provided on or before their start date, then it is crucial that a longer period is permitted where this is not reasonably practicable (as referred to in this paragraph).

Q13 To what extent do you agree that other parts of the written statement should be provided within two months of their start date?

We strongly agree that employers should have two months to provide both the information which currently does not have to be in the principal written statement and the information which we have said in our response to Q.11 should not be added to the principal written statement.

Q14 – Q17 Not applicable.

Q18 and Q19

We do not have information from our members on their awareness of the ACAS guidance.

Continuous Service

Q20 What do you think are the implications for business of the current rules on continuous service?

We think that the current rules work for businesses and are fair to employees as the one-week rule is easy to understand and the rules result in the right categories of employees, ie those who provide a higher level of commitment to the business, acquiring more employment rights. In our industry the flexible working arrangements (leading to periods where service is broken by more than week) are beneficial for individuals because they have other commitments, eg other jobs, interests. We believe that those who benefit from this level of flexibility should not have the same employment rights as those who commit to long continuous periods of work.

Q21 Not applicable.

Q22 Do you have examples of instances where breaks in service have prevented employees from obtaining their rights that require a qualifying period?

We are not aware of any examples of this.

Q23 Do the current rules on continuous service cause any issues in your sector?

We are not aware of them causing any significant issues.

Q24 We have committed to extending the period counted as a break in continuous service beyond one week. What length do you think the break in continuous service should be? 2 weeks, 3 weeks, one month, 6 weeks, other.

We believe that one week works well but, if it is to be extended, we would consider two weeks to be the most appropriate period. As referred to above, it is not fair to employees committing for periods without a break in employment to have the same employment rights as those who have the flexibility to end their employment and work elsewhere for, eg a month, before returning to start a new contract.

Q25 Do you believe the existing exemptions to the break in continuous service rules are sufficient?

Yes.

Q26 We intend to update the guidance on continuous service, and would like to know what types of information you would find helpful in that guidance.

Real examples from case-law would be useful.

Holiday Pay

Q27 and Q28

Do you agree that government should take action to change the length of the holiday pay reference period? If you answered yes, should government increase the reference period from 12 weeks to 52 weeks, set a 52 week default position but allow employees and workers to agree a shorter reference period or set a different reference period?

We are not aware of any issues with the current 12-week reference period, which is used in our sector, and so do not believe it needs to be changed.

If it is to be changed then we believe that 12 weeks should be the default period with the power for employees/workers and employers to agree a longer reference period up to 52 weeks. If that is not accepted, then we believe that, if there is a longer default reference period, eg 52 weeks, there must be a power for employers and employees/workers to agree an alternative shorter reference period because 52 weeks will not be appropriate for every situation.

Q29 What is your understanding of atypical workers' arrangements in relation to annual leave and holiday pay?

We do not have information on this from our members. Our view is that applying the Working Time Regulations to those with irregular patterns of work, particularly casuals, is artificial. This is because sometimes they are only engaged for an emergency/very short cover period and are not required again or not required for a long period, but they have to take holiday when they are no longer required by the organisation and would not have been working in any event. This also does not necessarily achieve the aim of providing them with rest from work as they are free to work elsewhere in that period.

Q30 How might atypical workers be offered more choice in how they receive their holiday pay?

We fully support the desire to find a more flexible way to provide atypical workers with annual leave and pay but we do not have examples of how this may be achieved.

Right to Request

Q31 Do you agree that we should introduce a right to request a more stable contract?

We do not agree that this new right is required and are concerned that it could significantly reduce the flexibility which is beneficial to both employers and workers in these arrangements. Additionally, if the pattern of work changes so that a casual worker starts to work very regularly, it is currently an option for them to speak to the business about changing their contract.

Q32 Should any group of workers be excluded from this right?

Those who work on a genuinely ad hoc basis and those who have not been engaged for a sufficiently long period (see answer to question 35 below). It should only cover those who actually have regular working hours if the request is for a contract which reflects actual hours worked.

Q33 Do you think this will help resolve the issues the review recommendations sought to address?

We think it could create other issues as there are likely to be conflicting views on whether someone has worked sufficiently regularly to have the right to make a request. Also, an employer may genuinely not be able to guarantee a fixed number of hours, due to workflow, which is the reason many employers hire people on a casual basis.

Q34 Should employers take account of the individual's working pattern in considering a request?

Yes, this is crucial as a more stable contract may not be feasible or appropriate for the role if the work is not available to make the working pattern more stable. For this reason, it is crucial that this is only a right to request and that the employer can reject the request.

Q35 Should there be a qualifying period of continuous service before individuals are eligible for this right?

Yes, this is crucial because there needs to be a period of work to assess the working pattern and a review of the working pattern is essential for the reason stated in response to Q.34. We think that 26 weeks is appropriate and it is in line with the right to request flexible working.

Q36 What is an appropriate length of time the employer should be given to respond to the request?

Three months, or longer if not reasonably practicable.

Q37 Should there be a limit on the number of requests an individual can submit to their employer in a certain period of time?

Yes. We consider one in every 12-month period to be appropriate as this mirrors the right to make a flexible working request.

Q38 When considering requests, should Small and Medium Enterprises be included?

No.

ICE Regulations 2004

Q39 – Q48

We are not aware of any issues being raised in our sector in relation to these Regulations so we have no comments on this section.

Conclusion

It is key that any changes in the above areas include provision for flexibility because, for example, there will be circumstances where it is reasonable that an employer cannot provide the required information within the requisite time or cannot grant the requested change. Employers should not be penalised in these circumstances.

Thank you for providing the opportunity for us to comment. If you require any further information, please do not hesitate to contact me. I should be grateful if you would keep us informed of any developments.

Yours faithfully.

Deputy Head of Legal Affairs