BNNSUBMISSION OF UK HOSPITALITY TO THE BEIS CONSULTATION ON MEASURES TO INCREASE TRANSPARENCY IN THE UK LABOUR MARKET

1. Introduction

UK Hospitality – formed earlier this year by the merger of the Association of Licensed Multiple Retailers (ALMR) and the British Hospitality Association (BHA) - is the voice of hospitality across the UK, representing a sector spanning bars, coffee shops, contract catering, hotels, nightclubs, pubs and visitor attractions. The sector is a major contributor to the UK economy, employing 2.9 million people and generating £130bn in economic activity, while paying £38bn in taxation to fund important local and national services. Hospitality is the 3rd largest private sector employer in the UK; double the size of financial services and bigger than automotive, pharmaceuticals and aerospace combined.

2. Written Statements

We support extending the right to a Written Statement to non-employee workers or dependent contractors.

Concerning the contents of the Written Statement, the present split between a principal statement and other sources (staff intranet or handbook) should be maintained. Ideally, the principal statement should be confined to terms and conditions of employment.

We do not agree with the suggestion (para 19) that the specific times and days workers are required for work are included in the principal statement – alongside the information on hours of work. Whilst recognising why such a reform is being suggested, we would ask that the unpredictability of demand in customer facing sectors like ours is acknowledged. Together with the fact that many people in the workforce value the flexibility they have presently, we see this suggestion as inappropriate for sectors like ours.

In para 20, the Consultation raises the possibility of 'training requirement and entitlement' being included in the principal statement. We do not agree with this proposal for a number of reasons. The reality is that employees receive mandatory training which enables them to do their job – this would include all health and safety issues. But once employees are at this 'base position of knowledge and capability' the access to learning and development varies. It varies between companies and, crucially, varies between employees. Not every employee wants to avail themselves of the opportunity to go on a non-mandatory course or access a learning module through a company's in-house academy. There are, of course, specific learning requirements for apprentices which businesses need to follow. Individuals' progression and development from the 'base position' can not be laid out at the beginning of the employment contract.

Also in para 20 is the suggestion that all forms of remuneration be included in the principal statement. The basic, *guaranteed* level of remuneration must, of course, be included in the principal statement and we do not see the merit of including *discretionary or non-guaranteed* elements of remuneration. We do not believe that this would improve employment relationships but it could increase confusion.

3. Continuous Service

We recognise that the Government has decided to increase from one week the 'permitted' break in continuous service. We welcome the fact that the Government have consulted on whether the break should be extended to 2, 3, 4 or 6 weeks and not just accepted the Taylor recommendation of a move to one month.

We are not aware of any evidence of the prevalence of this type of intermittent, 'as required' employment in Hospitality and would prefer the break to be extended to 2 weeks at this stage. If it were shown not to have a damaging effect on employment levels or business efficiency it could be further increased to 3 or 4 weeks at a future date. But it would be difficult to *reduce* it to 2 weeks if analysis were to show that a move to (say) 4 weeks had been too bold.

We are unaware of any conclusive evidence that there are disreputable employers (in any sector) deliberately preventing employees from accruing continuous service by 'turning off' the availability of work. A perverse effect of extending the break period by too great an amount would see workers disadvantaged by being away from work for a longer period of time.

Updating the existing guidance on what constitutes a temporary cessation of work within continuous service could be helpful but we have not been made aware that the current rules are misunderstood.

4. Holiday Pay

We agree with the Government's acceptance of the Taylor recommendation that more should be done to raise awareness of holiday pay entitlements and agree that working with ACAS and others is the right way forward in this area.

We also support the extension of the holiday pay reference period for workers without normal working hours from the current 12 weeks to 52 weeks. Such a move is likely to be fairer for both employee and employer as unrepresentative periods of work activity/inactivity can be ironed out over a longer reference period. In Hospitality, there are some sub-sectors which have a clear seasonal element to trading and this reform can help in getting rid of distortions.

This is a complex area and sufficient time should be given for businesses and payroll providers to make the change. The Government could consider making the 52 weeks 'the default position' but allow the employer and employee the scope to agree a shorter reference period if this was mutually desired. Such a move away from the norm would need to be documented in writing and could not be forced upon an employee.

5. Right to Request

For some businesses in the Hospitality sector, non-guaranteed hours arrangements have been shown to work well for both employers and employees. Crucially, for businesses, they provide for the size of the workforce to be aligned with the level of demand. In some parts of the sector, smart technology is used for labour scheduling based not only on past levels of trade but new events as well. But the 'walk-in' element is ever present: a highly 'customer – responsive' sector must have the ability to manage its payroll cost base in a dynamic and flexible way.

Businesses do recognise the advantage of a 'stable' workforce – performance can be higher because of higher levels of employee morale and engagement. Some companies have started to offer workers the right to review their contractual hours and we expect this trend to continue.

We would prefer that more emphasis is placed on the existing right to request flexible working rather than introducing new rights at this time. Were a new right to request a more predictable and stable contract introduced in law, it would need to be accompanied by the business having the right to decline the request if there were justified business reasons. The qualifying period to respond to a request should be set at 3 months.

6. Information and Consultation

Whilst we understand and could agree with the extension of the ICER regulations to cover workers (the same logic as extending Written Statements), we are not in favour of further regulation in this area. We do not support the proposal to lower the threshold from 10% to 2% for negotiations to commence on setting up information and consultative arrangements.

Businesses know the value of engaging and involving their workforce and through workplace meetings, Intranets, Business TV, social media are already making sure that they do so. Further regulation in this area is not necessary; it's far better to allow businesses the flexibility to pursue their own approach.